(12151)

12151

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) points in Canada and Mexico, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

12152

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or here-

(12152)

after specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

12153

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same terri-

(12153, 12154)

tory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

12154

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

(12155)

12155

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

JOHNSON FLYING SERVICE, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

(12155, 12156)

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the Canadian Government such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

12156

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(12156)

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

12157

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

MODERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada and Mexico, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regu-

lations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

12158

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board,

either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

(12159)

12159

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

PURDUE AERONAUTICS CORPORATION

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regu-

lations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the Canadian Government such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

12160

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board,

(12160)

either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

12161

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

SATURN AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same terri-

(12161, 12162)

tory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

12162

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or here-

after specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

(12163)

12163

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

SOUTHERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a trans-pacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the

Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

12164

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(12164)

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

12165

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

TRANS INTERNATIONAL AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the

(12165, 12166)

Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand;

(c) points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand.

2. In overseas and foreign air transportation, and in-air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

12166

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges

granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

(12167)

12167

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

WORLD AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a trans-pacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the

Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand;

(c) points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

12168

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the

(12168)

privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

12169

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

ZANTOP AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada and Mexico, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's

(12169, 12170)

Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

12170

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however,* That prior to the date on which this certificate would otherwise become effective the Board,

either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

(12171)

12171

Order No. E-24238

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966
Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amendments to Parts 208 and 378 of the Board's Regulations, which are attached hereto and made a part hereof.[1]

2. That said amendments shall be effective on November 26, 1966.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

[1] For administrative convenience we have combined into a single amendment to Part 378 the revisions required by the decision in the instant proceeding as well as the decision in the *Reopened Transatlantic Charter Investigation* (All-Expense Tour Phase), Docket 11908 *et al.*

12172

Regulation No. ER-474

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Economic Regulations
Amendment No. 2 to Part 208
Effective: November 26, 1966
Adopted: March 11, 1966

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN CERTIFICATED SUPPLEMENTAL AIR TRANSPORTATION

Part 208 of the Board's Economic Regulations (14 CFR Part 208), which contains, *inter alia,* certain terms, conditions and limitations of interim certificates issued pursuant to section 7 of Public Law 87-528 and of certificates issued pursuant to section 401(d)(3) of the Act, was revised and reissued[1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding,* Docket 13795 *et al.*[2] In order to correspond with the

[1] Regulation ER-454, adopted on March 11, 1966, and published in 31 F. R. 4771.

[2] Order E-23350.

(12172, 12173)

scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to authorizations to perform interstate air transportation.[3]

To correspond with authorizations being awarded as a result of the Board's final decision in the foreign and overseas phase of the *Supplemental* case,[4] which is being issued

12173

concurrently herewith, we are amending Part 208 to expand its coverage to certificated supplemental overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceeding, further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 208 of its Economic Regulations (14 CFR Part 208), effective November 26, 1966, as follows:

1. Amend the table of contents by adding §208.32a and by revising §208.33 to read as follows:

208.32a Flight delays and substitute air transportation (foreign).

208.33 Flight delays and substitute air transportation (interstate and overseas).

---

[3] Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District or Columbia.

[4] Order E-24237.

2. Amend §208.3 by revising paragraphs (c) and (t) thereof to read as follows:

(c) "Supplemental air transportation" (other than operations subject to Part 295 of this subchapter) means charter flights in air transportation performed pursuant to (1) an interim certificate or authorization issued under section 7 of Public Law 87-528, or (2) a certificate of public convenience and necessity issued under section 401(d)(3) of the Act authorizing the holder to engage in supplemental air transportation of persons and property between any point in any State of the United States or the District of Columbia, and any other point in any State of the United

12174

States or the District of Columbia (exclusive of air transportation within the State of Alaska) or in foreign or overseas supplemental air transportation.

(t) "Substitute service" means the performance by an air carrier of foreign or overseas air transportation, or air transportation between the 48 contiguous states, on the one hand, and the state of Alaska or Hawaii, on the other hand, in planeload lots pursuant to an agreement with another air carrier to fulfill such other air carrier's contractual obligation to perform such air transportation for the Department of Defense and when the performance of such air transportation is not to take place during a period longer than three weeks.

3. Amend §208.32(d) to read as follows:

§208.32 *Tariffs and terms of service.*

• • • • •

(12174, 12175)

(d) Each and every contract for a charter to be operated hereunder shall incorporate the provisions of §§208.10 through 208.15, inclusive, and 208.32a, 208.33 and 208.33a where applicable, concerning insurance and substitute transportation.

4. Add a new §208.32a entitled "Flight delays and substitute air transportation (foreign)" to read as follows:

§208.32a *Flight delays and substitute air transportation (foreign).*

Supplemental air carriers shall assume, and publish as part of the rules and regulations of their tariffs applicable to passenger service in foreign air transportation, the following obligations without prejudice, and in addition, to any other rights or remedies of passengers under applicable law:

12175

(a) *Substitute air transportation.*

(1) On all charter flights, unless the air carrier causes an aircraft to finally enplane each passenger and commence the takeoff procedures at the airport of departure before the forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this paragraph.

(2) As soon as the air carrier discovers, or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than forty-eight hours, such air carrier shall arrange for and pay the costs of substitute air

transportation for the charter group on another charter flight, operated by any other carrier or foreign air carrier.

(3) When neither the charter transportation contracted for nor substitute transportation has been performed before the expiration of forty-eight hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually ticketed flights and the chartered air carrier shall pay the costs of such air transportation to the substitute air carrier or foreign air carrier.

(4) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this paragraph, periods of delay caused by the prohibition of flights from the airport of departure because of weather or other operational conditions shall be excluded

if, and while, the air carrier had an airworthy aircraft which is capable of transporting the charter group in a condition of operational readiness posted at such airport.

(b) *Incidental expenses.*[5]

(1) On all charter flights bound from a point outside the continent where the charter originated to the point where

[5] Although the requirements with respect to providing incidental expenses are made expressly applicable only to the return leg of a charter flight, the air carriers are expected, in the case of delay in departure of the originating leg of a flight, to furnish such incidental expenses to charter passengers whose homes are not located within a reasonable distance from the point of origination of the charter.

it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the takeoff procedures at the airport of departure before the sixth hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this paragraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent, for the account of each passenger, including infants and children traveling at reduced fares.

(2) Such payments shall be made at the rate of $16.00 for each full twenty-four hour period of delay following the scheduled departure time. However, the sum of $8.00 shall be paid for each passenger delayed six hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8.00 shall be paid for each passenger delayed in installments of $4.00 for the first and second succeeding six-hour period

of delay, or any fractional part thereof. If the delay continues beyond a period of 24 hours following the scheduled departure time, such payments shall be made in equal installments of $4.00 for each further six-hour period of delay, or any fractional part thereof: *Provided, however,* That the air carrier may, at its option, discharge this obligation by providing free meals and lodging in lieu of making such payments. The obligation of the air carrier to pay incidental expenses or provide free meals and lodging shall cease when substitute air transportation is provided in accordance with the provisions of paragraph (a) of this section.

5. Amend the title of §208.33 to read as follows:

§208.33 *Flight delays and substitute air transportation, (interstate and overseas).*

6. Amend §208.302(b) to read as follows:

§208.302 *Terms of service.*

* * * * *

(b) The terms of service prescribed in §§208.10 through 208.15, inclusive, 208.32(d), 208.32a, 208.33 and 208.33a shall be applicable in the case of single entity charters.

(Section 204(a), 72 Stat. 743, 49 U. S. C. 1324. Interpret or apply secs. 401(d)(3), 401(n), 407 and 417 of the Federal Aviation Act, 76 Stat. 143, 49 U. S. C. 1371; 76 Stat. 144, 49 U. S. C. 1371; 72 Stat. 766, 49 U. S. C. 1377; 76 Stat. 145, 49 U. S. C. 1387; and sec. 7 of Public Law 87-528, 76 Stat. 146.)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 2 to Part 208 effective May 13, 1966.

(12178)

12178

Regulation No. SPR-16

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Special Regulations
Amendment No. 2 to Part 378
Effective: November 26, 1966
Adopted: March 11, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN AIR TRANSPORTATION

Part 378 of the Board's Special Regulations (14 CFR Part 378), which contains the regulatory provisions governing the operation of inclusive tour charters, was originally issued[1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding,* Docket 13795, *et al.*[2] In order to correspond with the scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to inclusive tours in interstate air transportation.

---

[1] Regulation No. SPR-14, adopted March 11, 1966, and published in 31 F. R. 4779.

[2] Order E-23350.

To correspond with authorizations being awarded as a result of the Board's final decisions in the foreign and overseas phase of the *Supplemental* case[3] and in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, *et al.*,[4] which are being issued con-

12179

currently herewith, we are amending Part 378 to expand its coverage to inclusive tours in overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceedings, and because parties to the rule making were heretofore given the opportunity to comment on this matter,[5] further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 378 of its Special Regulations effective November 26, 1966, as follows:

1. By revising §378.1 to read as follows:

---

[3] Order E-24237.

[4] Order E-24240.

[5] Part 378 as originally proposed pertained to interstate and *overseas* air transportation (Notice of Proposed Rule Making SPDR-6, January 5, 1965, 30 F. R. 281). Moreover, the proposed regulation was amended to cover *foreign* air transportation (Supplemental Notice of Proposed Rule Making, SPDR-6B, October 11, 1965, 30 F. R. 13077). Comments concerning both of these Notices were received, as set forth in SPR-14, *supra*, and have been considered by the Board.

(12179, 12180)

§378.1 *Applicability.*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate, overseas and foreign air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions of this regulation shall not be construed as limiting any

other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

2. By revising §378.2(a) to read as follows:

§378.2 *Definitions.*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours.

(Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended, (72 Stat. 737; 49 U. S. C. 1301; 72 Stat. 743; 49 U. S. C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U. S. C. 1371; 72 Stat. 768; 49 U. S. C.

1379; 72 Stat. 770; 49 U. S. C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U. S. C. 1371).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 2 to Part 378 effective May 13, 1966.

(12181)

12181

Order No. E-24239

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record and on the basis of the findings and conclusions set forth in the Board's decision of March 11, 1966, Order E-23350, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That the interim certificates and interim authority for supplemental air service, to the extent not previously ordered terminated by Order E-23350, March 11, 1966, shall terminate with respect to each of the carriers whose names are set forth in paragraph 1 of Order E-24237, issued con-

temporaneously herewith, upon the effectiveness of the certificates respectively issued thereunder.

2. That this order shall be effective upon the date of the approval by the President of the United States of Order E-24237, issued contemporaneously herewith.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

12322

Order No. E-24431

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 22nd day of November, 1966

Docket 13795, *et al.*

SUPPLEMENTAL AIR SERVICE
PROCEEDING

Docket 11908, *et al.*

REOPENED TRANSATLANTIC CHARTER
INVESTIGATION

ORDER DENYING RECONSIDERATION

By Orders E-24237 through E-24242, issued on September 30, 1966, following Presidential approval in the above-entitled proceedings, including the all-expense tour phase of Docket 11908, the Board granted certificate authority to various supplemental air carriers to engage in civilian and military charter flights, including inclusive tour charters, with respect to persons and property[1] in the foreign and

[1] Those carriers granted transatlantic authority, however, were not authorized to operate cargo charters.

overseas areas specified in the respective certificates. The foregoing authority was granted for a five-year term from the effective date of the certificates (November 26, 1966), with the exception of the transatlantic certificates which expire on April 18, 1969, in order to coincide with the authority previously granted to Capitol Airways and Saturn Airways in that area.[2]

Petitions for reconsideration of the above Board orders, and for other relief, have been filed by various parties.[3] Answers in support of, or in opposition to, the petitions have also been filed.[4]

12323

Upon consideration of the aforesaid petitions, we find that the matters set forth therein do not establish error in the Board's decisions or otherwise demonstrate that the relief requested is warranted.[5]

---

[2] See Orders E-20530 and E-20531, February 24, 1964.

[3] Capitol Airways, Johnson Flying Service, Modern Air Transport, Overseas National Airways, Saturn Airways, Trans Caribbean Airways and Zantop Air Transport.

[4] American Flyers Airline, Bureau of Operating Rights, Capitol Airways, Overseas National Airways, Pan American World Airways, Trans Caribbean Airways, Trans World Airlines, Vance International Airways, and Zantop Air Transport. In addition, a late-filed answer was submitted by Seaboard World Airlines, and a reply to the Bureau's answer was filed by Saturn, both of which we have determined to accept.

[5] The petitions for reconsideration filed by Overseas National Airways and Capitol Airways also requested that certain amendments be made to Parts 208 and 295 of the Board's Economic Regulations. These matters are treated separately in Regulations ER-478 and ER-479, which are being issued concurrently herewith.

(12323)

ACCORDINGLY, IT IS ORDERED THAT:

1. The motions of Seaboard World Airlines and Saturn Airways for leave to file otherwise unauthorized documents be and they hereby are granted; and

2. The petitions for reconsideration and other relief filed herein be and they hereby are denied.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

12324–12326

[Reg. No. ER-478]

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Substitute Air Transportation; Foreign

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 22d day of November 1966.

In conjunction with its decision in the foreign and overseas phase of the Supplemental Air Service Proceeding, Docket 13795, et al.,[1] the Board concurrently amended Part 208 of its Economic Regulations, which contains the provisions governing the charter operations of certificated supplemental air carriers except those rules applicable to inclusive tour charters, to expand the coverage of that regulation to foreign and overseas air transportation.[2] In its petition for reconsideration of the above decision, Overseas National Airways requests that §208.32a as adopted therein[3] be amended (1) to exclude those delays caused by the prohibition of flights to, as well as from, the airport of departure because of weather or other operational conditions, and (2) to delete the requirement that the delay will be excluded only if it occurs while the air carrier has

[1] Orders E-24237, E-24238, and E-24239, issued on Sept. 30, 1966.

[2] Regulation ER-474, which was attached to and incorporated in the aforesaid Board decision.

[3] Section 208.32a provides, inter alia, that following a delay of 48 hours in the departure of a charter flight substitute air transportation must be provided.

an airworthy aircraft available at the departure airport. The only reply to ONA's petition was filed by the Board's Bureau of Operating Rights, which concurred in the first proposal but made no comment with respect to the second.

On reconsideration, we have determined to amend §208.32a in the first respect set forth above in order to expand the exculpatory effect of that provision to situations where the carrier is prevented by weather or other operational conditions from positioning an aircraft at the airport of departure. However, we shall deny ONA's petition with respect to its second request since it is not unreasonable in our view to require a carrier to maintain an aircraft in operational readiness during the period of delay.[4]

For the reasons set forth in Regulation ER-474, the Board finds that further notice and public procedure hereon are not in the public interest. Accordingly, the Board hereby amends Part 208 of its Economic Regulations (14 CFR Part 208), effective November 26, 1966.

---

[4] If ONA's second proposal were adopted, a carrier could commence maintenance on an aircraft during a period of delay caused by adverse weather and, if the weather suddenly abated, the aircraft might not be in condition to immediately depart.

12327-12329

[Reg. No. ER-479]

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

Definitions; Charter Flight

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 22d day of November 1966.

In conjunction with its decision in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, et al.,[1] the Board amended §295.2(b) of its Economic Regulations to expand the definition of transatlantic "charter flight" to include inclusive tour charters.[2] Subsequent to the adoption of the above amendment (ER-475) on March 11, 1966, but prior to its issuance on September 30, 1966, the Board issued a separate amendment (ER-467)[3] revising §295.2(b) so as to authorize the transatlantic supplemental air carriers to furnish free and reduced rate transportation to employees of other carriers under certain conditions. Since ER-475 does not include the language adopted in ER-467, it now becomes necessary to amend §295.2(b) so as to incorporate the provision concerning free air transportation.

---

[1] Orders E-24240 and E-24241, issued on Sept. 30, 1966.

[2] Regulation ER-475, which was attached to and incorporated in the above orders.

[3] ER-467 was adopted on June 24, 1966.

(12327-12329)

Capitol Airways in its petition for reconsideration of Order E-24241 and Regulation ER-475, issued on September 30, 1966, has requested that Part 295 be amended so that foreign as well as domestic persons would be authorized to become tour operators. This matter was not litigated in the reopened proceeding and it raises special problems as to the extent to which the Board should assert jurisdiction over and regulate foreign tour operators. Accordingly, we will defer the matter for future consideration in a rule making proceeding.

Inasmuch as the regulation involved herein involves only an administrative correction, we find that further notice and public procedure hereon are unnecessary and not in the public interest. Accordingly, the Board hereby amends §295.2(b) of its Economic Regulations, effective November 26, 1966.

Order No. E-16023

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 14th day of November, 1960

Docket 11908

TRANSATLANTIC CHARTER
INVESTIGATION

ORDER OF INVESTIGATION AND CONSOLIDATION

As detailed in the Notice of Proposed Rule Making issued contemporaneously herewith (EDR-21, Docket 11907, Part 295), we have concluded that the continuing development of transatlantic passenger charter transportation warrants review in a formal proceeding to determine whether the public convenience and necessity require a more permanent authorization of transatlantic charter service by air carriers not possessing certificated route authority for individually ticketed passenger service across the Atlantic. Our order herein institutes such an investigation and directs consolidation therewith of pending applications for certificates of public convenience and necessity to perform transatlantic passenger charter flights.

(12335, 12336)

THEREFORE, IT IS ORDERED:

1. That an investigation, Docket 11908, be and hereby is instituted to determine whether the public convenience and necessity require the certification of one or more air carriers to conduct transatlantic passenger charters from or to points in the United States and, if so, under what terms and conditions;

2. That the applications of the following named carriers in the dockets noted be and hereby are consolidated with the investigation instituted herein by ordering paragraph No. 1:

Applicant	Docket No.
Overseas National Airways, Inc.	8056
United States Overseas Airlines, Inc.	8951

12336

3. That this proceeding be set down for prehearing conference before an examiner of the Board at a time and place hereafter to be designated;

4. That this order be served on all supplemental air carriers, on all applicants for supplemental air carrier authority, and on all other air carriers holding certificates of public convenience and necessity.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

/S/ ROBERT C. LESTER
Robert C. Lester
Secretary

(SEAL)

EDR-21

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Economic Regulations
Docket No. 11907
Dated: November 14, 1960

PART 295—TRANSATLANTIC CHARTER TRIPS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the Civil Aeronautics Board has under consideration proposed amendments of Part 295 of its Economic Regulations to eliminate the requirement of prior Board authorization or approval of transatlantic passenger charter flights falling within the scope of this regulation.

This regulation is proposed under the authority of Sections 204(a) and 416 of the Federal Aviation Act of 1958 (72 Stat. 743 and 771; 49 U. S. C. 1324 and 1386).

Interested persons may participate in the proposed rule making through submission of ten (10) copies of written data, views or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington 25, D. C. All relevant matter in communications received on or before December 16, 1960, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available on and

after December 16, 1960, for examination by interested persons in the Docket Section of the Board, Room 711,

Universal Building, 1825 Connecticut Avenue, N. W., Washington, D. C.

By the Civil Aeronautics Board:

/s/ ROBERT C. LESTER
Robert C. Lester
Secretary

(SEAL)

EXPLANATORY STATEMENT

There are now three classes of air carriers which provide the bulk of transatlantic passenger charter service. These are the United States flag route carriers which are certificated to carry passengers across the Atlantic, certain foreign air carriers, and the United States supplemental and cargo carriers. Prior to 1955, only the first two classes were available to provide charter service for the traveling public. In that year, the Board issued a new policy—called the Transatlantic Charter Policy—which gave rise to a new category of carriers which provide additional charter service. In adopting a policy of granting individual exemptions to the supplemental air carriers and the certificated cargo route carriers for transatlantic charter service, the Board was moved in part by indications that during the peak travel season, it was difficult if not impossible to obtain an aircraft charter. Since adoption of

12350

the Charter Policy, there has been a substantial and sustained growth in the use of charter service in which this new class of carrier has played a substantial part.[1]

For example, in 1957, there were 524 one-way transatlantic charter flights carrying approximately 38,700 people during the charter season April 1 through September 30. In the current year comparable figures are 1,532 one-way flights carrying approximately 129,600 people. The growth of charter service has more than kept pace with normal traffic growth. Since 1957 charter traffic itself has been growing at a rate which is believed to approach 50 percent each year. During this same period, individually-ticketed traffic across the Atlantic has also increased rapidly—its growth rate exceeds 20 percent annually. In 1957, we estimate that charter flights carried about 6½ percent of the total transatlantic traffic in the April-September period; in 1960, the figure exceeded 11 percent.

The Board has had as its major objective the development of the large potential mass international travel market in the United States without undue diversion from the United States and foreign flag operators, and in particular from their regularly-scheduled, individually-ticketed services. In furtherance of this objective, the Board has from

12351

time to time redefined the standards for charter eligibility and established appropriate administrative techniques to inform the public and to obtain their compliance in order

[1] It is questionable, however, whether the aircraft supply has ever met the service demand; it is still difficult to obtain aircraft charters in the peak direction or season.

(12351, 12352)

to assure the performance of the flight by the carrier and the obtaining of necessary foreign landing rights therefor. Thus, in 1957, we amplified the general criteria for charter eligibility which we followed in 1955 and 1956. These criteria were largely those that had previously been developed by the carriers and the Board, and which were embodied in IATA Resolution 045, the requirements established by the national flag route operators for their own operations. In 1958, we adapted these standards to specific criteria more susceptible of precise application which have since been the cornerstone of our policy. And in 1959, we embodied them with minor modification in an Economic Regulation (Part 295), giving them greater stability and legal effect than theretofore. In 1959, we also concluded the *Foreign Off-Route Charter Investigation,* Docket 7173, in which foreign air carriers were for the first time authorized to perform off-route charters in air transportation. In addition to amending their permits to provide this authority, we promulgated a new Economic Regulation (Part 212) establishing as guides for issuance of a charter authorization standards similar to those in Part 295. In 1960, after the IATA carriers had finally undertaken, upon our request, to provide more definitive and enforceable stan-

12352

dards for their own operations, we undertook to modify Parts 295 and 212 in order to conform our requirements in substantial respects to those now provided in IATA Resolution 045.[2] Consequently, at the present time charter

[2] It was also necessary to impose as conditions to approval of Resolution 045 certain standards, especially with respect to travel agency participation in charters, which IATA had not provided for in the Resolution.

requirements for all classes of carriers are substantially similar.

During the developmental period of this program, the Board has considered it necessary and desirable to retain power to disapprove individual charter flights arranged by the supplemental and certificated cargo route carriers. Basically, we have been concerned that there not unwittingly develop any such widescale violation of appropriate charter requirements as would lead to a breakdown in the proper distinction between charter and individually-ticketed service, and thus have a serious adverse effect on the operations of the regularly scheduled services.[3] It now appears to the Board that standards for charter eligibility are sufficiently precise and understandable as to preclude inadvertent violations on any wholesale basis. Under such

12353

circumstances, the Board no longer believes that this reason warrants retention of the requirement for approval of individual charter flights.

As we have heretofore noted, there has been a substantial and sustained growth of transatlantic charter traffic by all classes of carriers participating in it. However, even in the recent summer season when the supply of aircraft for charters was substantially increased as a result of the jet reequipment program and the availability of otherwise idle piston aircraft capacity, there was no apparent oversupply of charter service. In fact, the contrary appeared to

[3] The Board does not believe that a carrier could successfully undertake deliberately to flout its requirements for charter eligibility without such fact becoming public knowledge and subjecting the violator to appropriate and effective sanctions.

be the case.[1] Recognition must be given to the fact that the route carriers may over the long run find it uneconomic to maintain appropriate facilities to operate piston aircraft merely to serve a seasonal charter market. And as a practical matter, jet capacity and costs may be such as to affect substantially the potential of jet aircraft for charter service. Under all these circumstances, it appears to be in the public interest for the Board to set down for hearing an investigation into whether the public convenience and necessity require the authorization, by certification or otherwise, of one or more carriers to provide transatlantic passenger charter service.

12354

Pending a final determination in this proceeding, we could as a matter of policy continue our current policy of authorizing each charter flight by granting a special exemption order. However, as we have previously noted, we are now satisfied that retention of the power to disapprove individual charter flights—which is the principal substantive purpose of this procedure—is no longer administratively necessary. Moreover, we are concerned that the economic and administrative burden which this procedure imposes on the relatively small carriers which participate in this activity is so substantial and disproportionate as to greatly handicap them in their ability to operate these services profitably. In this connection, the Board notes

[1] One foreign flag carrier sought extraordinary relief from the limitations of Part 212 on off-route charters on the ground that the charterers would otherwise be unable to be accommodated. No carrier challenged this contention. Moreover, to our knowledge carriers which made a belated entry into the market had no difficulty in obtaining a substantial volume of charter business.

that the identity of carriers participating in this traffic has shifted from year to year. In prior years, the certificated cargo carriers were major factors in the market; in recent years their efforts have greatly diminished. Again, supplementals which in the last season were among the larger participants had either not participated in the market before or only in token amounts. In this connection, we have been advised that both the cost of processing applications for approval of individual charter flights and the disadvantage of adherence to a procedure not required of competitors[5] have been substantial factors in causing with-

12355

drawal from the market of seemingly successful operators. Further, we recognize that at best the market is a highly seasonal one.[6] Consequently, from an economic standpoint, its attractiveness is limited. Under these circumstances, relatively small impediments can loom as large factors in a decision to devote resources to it.

These are reasons which have led us to set this matter down for hearing and possible award of certificate authority to one or more carriers who would undertake on a sustained basis to meet such need as may exist for charter services additional to those provided by the regular route operators.[7] They are also matters which, in our judgment,

---

[5] Neither the U. S. flag operators, nor the foreign flag operators for service over their route need request individual charter approval.

[6] We, of course, recognize that the fluctuations in MATS' policy and its effect on the availability of backhauls affect the economy of charter service and the desirability of participation in this market.

[7] Order E-16023, issued simultaneously herewith, instituting a Transatlantic Charter Investigation, Docket 11908.

warrant our granting an exemption from the provisions of Section 401 of the Act, as is hereinafter detailed, pending a final determination in this proceeding.[8]

For the period beginning April 1, 1961, we propose issuing exemption orders limited in duration to no more than 180 days, authorizing the holder to conduct transatlantic charter service in accordance with the requirements

12356

of Part 295 of the Economic Regulations. Such orders will be issued only to persons who are applicants for transatlantic charter authority, whose applications have been consolidated into the *Transatlantic Charter Investigation*, and who are actively prosecuting such applications. We shall also require each applicant to present for our consideration the scope of the charter service to be provided and the program employed to screen charters for proper compliance with Part 295. Each such application will, upon request, be subject to renewal pending final disposition of the investigation.

In order to accomplish this change the present provisions of Part 295 relating to application for operating authority and to reporting, which are geared to individual approval of each charter agreement, will require modification to reflect the new system of limited temporary blanket authorizations. Sections 295.13 and 295.40 which provide for applications for individual charter authority will be eliminated and replaced by new Section 295.5 which contains the requirements for application for the new exemption author-

[8] Compare *Transatlantic Cargo Case*, 21 C. A. B. 671 (1955); *Air Freight Case*, 10 C. A. B. 572 (1949).

ity. All provisions which relate to Board approval of specific aspects of charters not generally permitted under this Part (such as Sections 295.33(a) and 295.35(b)(3)) are being omitted. The effect of this is that air carriers may not perform charters which do not comply with this Part in every respect unless a waiver has been granted by the Board pursuant to Section 295.3 of this Part.

12357

Similarly, Section 295.17 which required individual post-flight reports to the Board is being eliminated. However, such information will have to be filed with the carrier by the travel agent and the chartering group as before. Insofar as Board requirements are concerned, the revised provisions of Part 295 will necessitate only the following report by the carrier within 15 days after the close of each month concerning charter trips operated during such month: (a) date of trip; (b) points served; (c) number of round trip and one-way passengers; (d) name of chartering organization; (e) description of chartering organization disclosing basis for conclusion that group is bona-fide; (f) name of travel agent; (g) basis for construction of tariff charge. These provisions will be found in new Section 295.6 which also contains the necessary record retention requirements.

12358

PROPOSED RULE

It is proposed to amend Part 295 of the Board's Economic Regulations, 14 CFR Part 295, as amended,

1. By amending Section 295.1 as follows:

(12358, 12359)

a. Amend the first sentence of Section 295.1 to read: "This Part establishes the requirements governing applications for, and operations under, exemption orders authorizing, for periods up to 180 days, the performance of pro-rata and/or single entity charter flights for transatlantic passengers by United States flag air carriers other than carriers certificated to provide unlimited individually ticketed passenger service over designated routes."

b. Amend the next to last sentence of Section 295.1 to read: "Operations under any such individual exemption authorizing the performance of transatlantic passenger charter flights shall be conducted . . ." (remainder unchanged).

2. By amending the last two sentences of Section 295.2(j) to read: "Presumptively persons are not *bona fide* members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans and unless they have actually been members for a minimum period of six months prior to the starting flight date. This presumption will not be applicable in the case of charters composed of (1) students and employees of a single school, and immediate families

12359

thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants in a formal academic study course abroad. In the case of all other charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

3. By amending the first sentence of Section 295.3 to read: "A waiver of any of the provisions of this regulation may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates, provided such a waiver . . ." (remainder unchanged).

4. By inserting new Sections 295.5 and 295.6 to read:

§295.5. *Application for exemption authority.* Proceedings on applications for exemption authority pursuant to Section 416(b) of the Federal Aviation Act of 1958 to conduct passenger charter flights (pro-rata and/or single entity charters) in foreign air transportation shall be governed by Rules 400 to 409 of Part 302 of the Board's Procedural Regulations, subject, however, to the following additional or different Provisions:

(a) Applications may be filed only by air carriers which are applicants in good standing for transatlantic charter

authority in *Transatlantic Charter Investigation,* Docket 11908, instituted by Board Order E-16023 of November 14, 1960.

(b) Applications for exemption authority shall be filed with the Board at least 60 days prior to the proposed first flight under such authority.

(c) The application shall state whether authority to fly pro-rata charters, or single entity charters, or both, is requested; the scope of the charter service to be provided; and the program to be employed for screening charters for proper compliance with Part 295.

(12360, 12361)

(d) Copies of the application shall be served on each direct air carrier certificated to provide unlimited transatlantic passenger service.

§295.6 *Reporting and record retention.*

(a) Fifteen days after the end of each calender month, each carrier holding operating authority pursuant to this Part shall file with the Board's Bureau of Air Operations a report setting forth the following information pertaining to each charter flight performed during said month pursuant to such authority:

(1) Date of trip;

(2) Points served;

(3) Number of round-trip and one-way passengers;

12361

(4) Name of chartering organization;

(5) Description of chartering organization disclosing basis for conclusion that the group is *bona fide;*

(6) Name of travel agent; and

(7) Basis for construction of tariff charge.

(b) Prior to performing any charter flight pursuant to this Part the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information."

(c) Air carriers holding operating authority pursuant to this Part shall preserve the following records for the periods specified below. Microfilms may be substituted for retention of the original records at any time.

Category of records	Period to be retained
1. Every charter contract	2 yrs.
2. Every "Statement of Supporting Information"	2 yrs.
3. All post-flight reports and vouchers submitted therewith	2 yrs.
4. All passenger manifests filed by charterers	2 yrs.
5. Proof of the commission paid to any travel agent by the carrier	2 yrs.

12362

5. By amending the first sub-title of Subpart A to read: "Requirements Relating to Air Carriers."

6. By amending Section 295.12 to read: *"Pre-trip notification.* Upon a charter flight date being reserved by the air carrier or its agent, the carrier shall provide the prospective charterer with a copy of this Regulation, Part 295.[1] [Footnote 1 to remain unchanged]. The charter contract shall include a provision . . ." (remainder as now contained in last sentence of Paragraph(c)).

7. By striking Section 295.13.

8. By amending the first sentence of Section 295.15(a) to read: "The total charter price and other terms of service rendered pursuant to authority granted under this Part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective

(12362, 12363)

charter flight, and the contract must be for the entire capacity of one or more aircraft."

9. By striking at the end of Section 295.15(c) the words "unless special or unusual circumstances are shown in the application for exemption authority and the Board approves thereof."

10. By amending Section 295.16 by striking the second sentence which begins with the words "Proof of commission . . .".

11. By striking Section 295.17.

12363

12. By adding a new Section 295.26 to read as follows:

§295.26 *Statement of Supporting Information.* Travel agents shall execute, and furnish to air carriers Section A of Part II of the Statement of Supporting Information.

13. By striking the last sentence of Section 295.33(a).

14. By amending Section 295.34(b) by striking the words "whichever is authorized".

15. By amending Section 295.35 as follows:

a. Amend Paragraph (a) by striking the words "whichever is authorized".

b. Amend Paragraph (3) of Subsection (b) to read: "(3) *Bona fide* members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participation in the charter flight was permitted by the Board pursuant

to request for waiver. Specify on the passenger manifest . . ." (remainder unchanged).

c. Amend Subsection (d) by striking the language following "(1)" and inserting in lieu thereof: "was a *bona fide* member of the chartering organization at the time the chartering organization first gave notice to its members of firm charter plans, and will have been a member for at least six months prior to the starting flight date, or (2) is a *bona fide* member of an entity consisting of (a) students and employees of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, (3) is a person whose partici-

pation has been specifically permitted by the Civil Aeronautics Board, (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household, or (5) is a *bona fide* participant in a charter composed of participants in a formal academic study course abroad.

(signature) ."

16. By adding a new Section 295.36 to read:

§295.36 *Statement of Supporting Information.* Charterers shall execute and furnish to air carriers Section B of Part II of the Statement of Supporting Information.

17. By striking Section 295.40.

18. By striking the words "set forth in the application" in Section 295.42.

(12364, 12365)

19. By striking the last sentence of Section 295.43.

20. By amending Section 295.60 by striking, at the beginning thereof, the words: "At any time prior to the filing of an application pursuant to this Part" and by adding to the second sentence thereof the words "in any subsequent proceeding in which the lawfulness of the respective charter may be in issue."

12365

21. By amending the form presently entitled "Application for Authority to Conduct Transatlantic Passenger Charter Flights" as follows:

a. Strike the present title "Application for Authority to Conduct Transatlantic Passenger Charter Flights" so that the form remains entitled: "Statement of Supporting Information".

b. Strike in the line following the designation "Part I" the word "applicant".

c. Strike Paragraph "d" of Question 5.

d. Strike footnote 1 and references to it throughout the form.

e. Strike from Question 13 the sentence at the end thereof, beginning with the words "If the answer is yes . . .".

f. Delete from Question 20 the sentence at the end thereof, beginning with the words "If the answer is no . . .".

g. Strike from the line "Verification of air carrier applicant" the word "applicant".

h. Strike from the clause "(Signature and title of authorized official of air carrier applicant)" the word "applicant".

12366

22. By amending the Form "Transatlantic Charter Post Flight Report" as follows:

a. Strike from the instructions the first sentence thereof, and insert in lieu thereof: "The charterer shall complete and file a report in this form with the air carrier within 15 days of each one-way or round-trip charter flight."

b. Strike Question 3.

(12520)

12520

Order No. E-17190

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 18th day of July, 1961

Docket 11908, *et al.*

In the matter of the

TRANSATLANTIC CHARTER INVESTIGATION

SUPPLEMENTAL ORDER OF INVESTIGATION AND CONSOLIDATION

By Order E-16023, November 14, 1960, we instituted this investigation to determine whether the public convenience and necessity require the certification of one or more air carriers to conduct transatlantic passenger charters from or to points in the United States and, if so, under what terms and conditions. By that order, we also consolidated herein two pending applications for certificates of public convenience and necessity to perform passenger charter flights, namely those of Overseas National Airways, Inc. (ONA), in Docket 8056, and of United States Overseas Airlines, Inc. (USOA), in Docket 8951. More recently, we have consolidated seven other pending applications herein,

namely those of Saturn Airways, Inc. (Saturn), in Docket 11962, President Airlines, Inc. (President), in Docket 11931, Capitol Airways, Inc. (Capitol), in Docket 11982, Imperial Airlines, Inc. (Imperial), in Docket 11965, Airline Transport Carriers, Inc. d/b/a California-Hawaiian Airlines (California-Hawaiian), in Docket 11999, The Flying Tiger Line Inc. (Flying Tiger), in Docket 6668, and Seaboard World Airlines, Inc. (formerly Seaboard & Western Airlines, Inc.) (Seaboard), in Docket 11971.[1]

It was our intention to consolidate such applications only insofar as they sought authority to conduct charter service within the appropriate geographical scope of this case, which we conclude should be defined by the traditional boundaries of transatlantic route proceedings. Since certain of the applications previously or hereby consolidated

12521

entail requests for authority beyond those boundaries, it appears desirable at this time to specifically limit this proceeding to a consideration of applications for certificated transatlantic passenger charter authority within the following area: between points within the 48 contiguous states, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia as far east as (and including) India, on the other hand. Consideration of applications for authority beyond that area would unduly expand this already broad proceeding and would, in our

[1] The pertinent orders were: Saturn—Order E-16967, June 20, 1961; President—Order E-17048, June 29, 1961; Capitol—Order E-17049, June 29, 1961; Imperial—Order E-17050, June 29, 1961; California-Hawaiian—Order E-17051, June 29, 1961; Flying Tiger—Order E-17133, July 10, 1961; and Seaboard—Order E-17134, July 10, 1961.

judgment, be premature. Therefore, we shall sever out of the previously consolidated applications of ONA, USOA, Saturn, Capitol, California-Hawaiian, and Seaboard, requests for authority beyond the geographical limits of this proceeding. In view of our desire to bring the Board's docket to a reasonably current basis and thus insure that important formal proceedings may be passed upon promptly, we shall dismiss the severed portions of the applications, without prejudice to the right of those carriers to file new applications for such further and specific authority as they may desire.

The Board also issued a Notice of Proposed Rule Making (EDR-21, Docket 11907, Part 295) contemporaneously with Order E-16023. That rule-making proceeding was concluded on April 20, 1961, by the issuance of a revised Part 295 (ER-326) which establishes the requirements governing applications for, and operations under, temporary (seasonal) blanket exemption authority for transatlantic passenger charter flights. One of the requirements of the amended Part 295 is that applicants for authority thereunder must be applicants in good standing for transatlantic charter authority in the instant proceeding (§295.5(a)).[2] To establish such eligibility to apply for the exemption authority, we shall consolidate all remaining pending applications for certificates of public convenience and necessity to perform transatlantic passenger charter flights. Consistent with our action herein with regard to the previously consolidated applications, we shall sever out of all such

[2] Our recent actions in consolidating the applications of Saturn, President, Capitol, Imperial, California-Hawaiian, Flying Tiger and Seaboard were grounded on this prerequisite to the award of temporary (seasonal) blanket exemption authority.

applications requests for authority beyond the geographical limits of this proceeding, and dismiss the severed portions without prejudice. In total, 31 applications will be totally or partially consolidated in this proceeding by the instant order and Orders E-16023, E-16967, E-17048, E-17049, E-17050, E-17051, E-17133, and E-17134.

The issues to be considered in the instant investigation are those which arise under section 401 of the Federal Aviation Act of 1958, as amended, namely: (a) whether the public convenience and necessity require the certification of one or more transatlantic passenger charter carriers and, if so, which carrier or carriers should be selected to perform such transportation; (b) whether the various applicants are fit, willing, and able properly to perform the proposed transportation and to conform to the provisions

of the Act and the rules, regulations, and requirements of the Board thereunder; and (c) what terms, conditions or limitations should be attached to any certificates which the Board might grant.

In placing in issue the terms, conditions and limitations which would attach to any authority ultimately granted herein, we contemplate a full consideration of the rules which should govern such operations. This includes, but is not limited to, further consideration of rules established by our recent amendment of Part 295 (ER-326, *supra*). As we stated in issuing that amended regulation, the hearing herein will be directed to the *long-range* needs and authorizations in the transatlantic passenger charter field (ER-326, *supra*, at p. 9). In determining rules to govern the broader and more permanent operations which may be

authorized herein, it is patent that the Board should have the benefit of a full evidentiary hearing. We, therefore, invite the applicants and all parties not only to offer any suggestions which they may have with regard to the suitability of the rules of Part 295 for a long-range program, but also to come forward with any new concepts which they may consider appropriate.

THEREFORE, IT IS ORDERED:

1. That the investigation in Docket 11908, instituted by Order E-16023, November 14, 1960, be and hereby is limited to the consideration of applications for certificates of public convenience and necessity to conduct transatlantic passenger charter services between points within the 48 contiguous states, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia as far east as (and including) India, on the other hand;

2. That the investigation in Docket 11908 shall entail consideration of the following issues:

(a) Whether the public convenience and necessity require the certification of one or more air carriers to perform transatlantic passenger charter flights as delineated in ordering paragraph No. 1 and, if so, which carrier or carriers should be selected to perform such transportation, and what terms, conditions or limitations should be attached to such certificates;

(b) Whether the various applicants for transatlantic passenger charter authority are fit, willing and able to perform such transportation properly, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and requirements of the Board thereunder;

3. That the applications of Overseas National Airways, Inc., in Docket 8056, United States Overseas Airlines, Inc., in Docket 8951, Saturn Airways, Inc., in Docket 11962, Capitol Airways, Inc., in Docket 11982, Airline Transport Carriers, Inc. d/b/a California-Hawaiian Airlines, in

12523

Docket 11999, and Seaboard World Airlines, Inc. (formerly Seaboard and Western Airlines, Inc.), in Docket 11971, insofar as they request authority to conduct passenger charter services via other than transatlantic routings or between points not within the geographical limits of this proceeding as defined by ordering paragraph No. 1, above, be and they hereby are severed and dismissed without prejudice;

4. That Order E-16023, and Orders E-16967, June 20, 1961, E-17049, June 29, 1961, E-17051, June 29, 1961, and E-17134, July 10, 1961, insofar as they consolidated with this investigation the portions of the applications severed and dismissed by ordering paragraph No. 3 hereof, be and they hereby are rescinded;

5. That the applications of the following named carriers in the dockets noted, insofar as they entail requests for transatlantic passenger charter authority within the geographical limits established in ordering paragraph No. 1, above, be and they hereby are consolidated with the investigation in Docket 11908;

Applicant	Docket No.
Resort Airlines, Inc.	6964
Modern Air Transport, Inc.	11930
Quaker City Airways, Inc.	11943

(12523, 12524)

Applicant	Docket No.
Associated Air Transport, Inc.	11947
General Airways, Inc.[3]	11948
Trans-Alaskan Airlines, Inc.[4]	11951
Currey Air Transport Ltd.[4]	11954
Great Lakes Airlines, Inc.[4]	11955
National Airlines, Inc.	11958
Standard Airways, Inc.	11963
12524	
Southern Air Transport, Inc.	11966
Sourdough Air Transport	11968
World Airways, Inc.	11981
Paul Mantz Air Services	11984
Slick Airways, Inc.	11985
Aerovias Sud Americana, Inc.	11989
Trans International Airlines, Inc.	11997

[3] Inasmuch as we understand that certain assets of General Airways, including the right, title and interest in certificates or other documents of authority held by that carrier were sold in a bankruptcy proceeding held in the United States District Court for the District of Oregon (*In the Matter of General Airways, Inc., Bankrupt*, No. B-44813), and no application has been made for a transfer of the certificate pursuant to section 401(h) of the Act, we shall consider General Airways to be an applicant currently holding no operating authority.

[4] In consolidating the applications of Trans-Alaskan, Currey, and Great Lakes for hearing herein, we wish to make it clear that we thereby take no action inconsistent with our action in Orders E-16050, November 22, 1960, and E-16140, December 15, 1960. In those orders, we dismissed applications by these three carriers under the specific circumstances therein presented. However, as we then stated, our action did not constitute any permanent barrier to the filing of applications by those carriers (Order E-16050, at p. 7, fn. 6). The applicants will, of course, have the burden of establishing that they are now fit, willing and able within the meaning of the Act.

(12524)

Applicant	Docket No.
Central Air Transport, Inc.	11998
Coastal Air Lines	12106
World Wide Airlines, Inc.	12125
Riddle Airlines, Inc.	12152
Blatz Airlines, Inc.	12194

6. That the applications listed in ordering paragraph No. 5, above, insofar as they request authority to conduct passenger charter services via other than transatlantic routings or between points not within the geographical limits established in ordering paragraph No. 1, above, be and they hereby are severed and dismissed without prejudice;

7. That this proceeding be set down promptly for prehearing conference before an Examiner of the Board; and

8. That this proceeding shall be expedited as much as possible.

This Order will be published in the Federal Register.

By the Civil Aeronautics Board:

/s/ HAROLD R. SANDERSON
Harold R. Sanderson
Secretary

(SEAL)

(12703)

12703

Order No. E-17607

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 18th day of October, 1961

Docket 11908 et al.

In the matter of the

TRANSATLANTIC CHARTER INVESTIGATION

ORDER

This investigation was instituted by Order E-16023 adopted November 14, 1960, to determine whether the public convenience and necessity require the certification of one or more air carriers to conduct transatlantic passenger charters and, if so under what terms or conditions. By Order E-17190 adopted July 18, 1961, the issues were further defined and it was pointed out that in placing in issue the terms, conditions, and limitations which would attach to any authority ultimately granted, a full consideration of the rules which should govern the operation was contemplated. Thus, the applicants and all parties were invited not only to offer any suggestions which they might have with regard to the suitability of the rules of Part 295 for a long-range program but also to come forward with any

new concepts which they might consider appropriate. The order in question also consolidated a number of applications, including Docket 11958 of National Airlines, Inc., (National) and Docket 11985 of Slick Airways, Inc., (Slick).

Thereafter, pursuant to notice of the Chief Examiner, the proceeding was assigned for a prehearing conference and all parties were directed to submit motions, requests for evidence, etc., on or before August 8, 1961. In accordance with the notice, Oregon Aviation Corporation (Oregon) and Air Cargo Express, Inc., (Air Cargo) filed motions to consolidate the applications in Dockets 12878 and 12884, respectively, which applications seek to engage in transatlantic charter air transportation with respect to persons, property, and mail; and Capitol Airways, Inc., (Capitol) and World Airways, Inc., (World) filed motions to consolidate the applications in Docket 12497 and Amendment No. 2 to Docket 11981, respectively, which applications and amendment seek authority to engage in individually-ticketed round trip all-expense tours. An answer opposing the motion of Capitol was filed by Pan American.

12704

Following a prehearing conference, statements were filed with the approval of the Examiner directed to the proposals of Capitol and World and/or to the scope of any new charter proposals which the Board would entertain; and simultaneously National moved to dismiss its application in Docket 11958, and Slick advised that it would not prosecute its application in Docket 11985.

Upon consideration of the motions of Oregon and Air Cargo, we find that to the extent their applications seek

to engage in transatlantic charter air transportation of passengers and their belongings, such applications are within the issues and should be consolidated. Accordingly, we will consolidate the pertinent portion of these applications and dismiss the requests with reference to mail and property charters. We also find that the motions of National should be granted and that applications of National in Docket 11958 and Slick in Docket 11985 should be dismissed without prejudice.

Further, upon consideration of the motions of Capitol and World, the answer of Pan American, and various statements of position filed subsequent to the conference with respect to the scope of the charter service proposals which we would entertain, we wish to point out that it was not our intention in Order E-17190 to consider any proposals for individually-ticketed services such as contemplated in the application of Capitol in Docket 12497 and Amendment No. 2 to World's application in Docket 11981. These proposals would permit a carrier granted a certificate as a result of this proceeding to sell tickets to individuals who are unrelated to any group and would more or less resemble the certificated authority of Resort Airlines which we do not consider to be a charter service. Accordingly, we will deny the motions of Capitol and World to consolidate these proposals. On the other hand, we cannot agree that the proposals in this proceeding should be limited to the traditional concept of transatlantic charters or to charters as defined in Part 295. However, we would expect such proposals to fall within the broadly accepted meaning of charters, *viz*, the lease of an entire vehicle on a time, mileage, or trip basis. This would not preclude proposals which contemplate charters by professionals engaged in the

formation of groups for transportation (travel agents) currently prohibited under Part 295 of the Economic Regulations. In other words, the chartering of an aircraft by a travel agent and the offering by such agent to the general public of all-expense group tours would be within the scope of the issues in this case.

THEREFORE, IT IS ORDERED:

1. That the applications of Oregon Aviation Corporation and Air Cargo Express, Inc., in Dockets 12878 and 12884, respectively, insofar as they request authority to conduct transatlantic charters of passengers and their belongings, be and they are hereby consolidated; that to the extent such applications request authority to conduct charters of property and mail, they are hereby severed and dismissed;

12705

2. That the applications of National Airlines, Inc., in Docket 11958 and Slick Airways, Inc., in Docket 11985 be and they hereby are dismissed; and

3. That the motions of Capitol Airways, Inc., and World Airways, Inc., be and they hereby are denied.

By the Civil Aeronautics Board:

/s/ HAROLD R. SANDERSON
Harold R. Sanderson
Secretary

(SEAL)

(15082, 15083)

15082

Transcript in Transatlantic Charter Investigation

Witness, PHILLIP R. CAPELLUPO for Pan American World Airways.

* * * * *

Cross-Examination by Mr. Hobbs:

Q. On page 3 of your testimony, Mr. Capellupo, the paragraph marked D in the middle of the page, you speak of the fact that the Transatlantic market is an area of high cost operation. And earlier in your testimony on cross-examination you spoke of landing fees being so much in London and dwindling down to a much lesser amount in this country.

Do you happen to know how much higher the Transatlantic run is than domestic runs for comparable length? A. Well, to be very specific with you, let's take flying operations. The pilots' and co-pilots' salaries are entirely different for international and domestic.

Examiner Keith: And international is higher?

The Witness: I believe it is considerably higher.

Examiner Keith: Is that because of over water?

15083

The Witness: Since it is an international operation.

Examiner Keith: Let me ask you, because I was going to ask this also, would you go into the areas where the cost of Transatlantic operation is higher than, say, an operation from New York to Los

Angeles? I know yesterday or the day before you mentioned in comparison that the airport landing fees at domestic points was an area of higher costs.

The Witness: Another area of higher costs is fuel in the European countries.

Examiner Keith: Fuel is higher there?

The Witness: Yes, piston engine fuel.

By Mr. Hobbs:

Q. What I am trying to get at ultimately is, do you have any idea what percent higher it is to run Transatlantic operations? Is it twice as much? A. No, I don't know. But if you look at Pan American's Transatlantic operations and compare these costs with the costs included in the exhibit by the supplemental carriers in this case—

Examiner Keith: You have got fuel, pilots' salaries, custom fees and landing fees. How about stewardesses, do they get the same pay? Are all of your entire flight personnel higher than domestic?

The Witness: I believe they are, plus the fact that

I believe you have persons stationed in Europe who in addition to getting salary, have overseas salary allowances that you don't have in the United States. But that is a cost you have to take into consideration, plus the fact that on these long hauls you have stationing of crews which may create additional costs which are not considered by some of these carriers.

Mr. Ryan: Would you explain what you mean by stationing of crews?

(15084, 15085)

The Witness: Well, the stationing of crews indicates that you fly with a single crew to a point and land, and then that crew gets off and a new crew gets on. And that particular crew waits, and it may wait a week, if it is a supplemental carrier, before the flight comes back and picks up that crew.

In the meantime it is paying the living expenses for these pilots while they are out of the country. Now, in addition, I am sure that most of these carriers who have ALPA contracts will be eventually faced with this one-and-four problem, which means that for every six hours that a crew is stationed away from their home base doing nothing, they must be paid one hour of flight pay.

So that means that for every 24 hours that they lay over, you may think them one hours of flight pay.

These are some of the items that represent higher

15085

costs in the Transatlantic operations. When I say Transatlantic, it is overseas, the same thing happens in Transpacific.

Examiner Keith: Are there any balancing lower costs?

The Witness: There might be some, to the extent of hiring some local personnel, but it is pretty nominal, because where you pay less money to a particular employee, you are not getting maximum efficiency out of the employee.

• • • • •

15338

Transcript in Transatlantic Charter Investigation

Witness, KENNETH L. BRIGGS for Trans World Airlines.

* * * * *

Hearing Examiner Keith: How do those costs compare? Are your Trans-Continental and Trans-Atlantic costs higher and by how much?

The Witness: Oh, on an hourly basis, Mr. Examiner, approximately $100 an hour higher in International operations.

15339

Hearing Examiner Keith: $100 an hour higher? That is your over-all operations?

The Witness: Yes, sir. That is using Boeing 707-331 aircraft in both instances, the same airplane. Transcontinental we have been running in 1961, I should say, the hourly cost, the cost per block hour was $555. This is excluding depreciation. In International operation it was $650.

Hearing Examiner Keith: Five hundred and what?

The Witness: $555 domestic.

Hearing Examiner Keith: Domestic?

The Witness: $650 International.

Mr. Hobbs: Mr. Examiner?

Hearing Examiner Keith: Yes, Mr. Hobbs.

Mr. Hobbs: I was not a e to catch much of what he said. He was sort of addressing himself to you. The figure I was interested in was $100 an hour higher for International operations for jets, is that what you said?

The Witness: Yes, sir.

* * * * *

(16308)

16308

United States Overseas Airways Exhibit No. 106

The Great Majority of U. S. Passports Issued and Renewed are for Travel To Europe, the Middle East and Africa

The strong tourist attraction of the areas at issue in this proceeding (Europe, Middle East and Africa) is clearly indicated by the fact that of the passports issued and renewed during the period July through December, 1958 75.1% listed one of the foregoing areas as its first destination.

Passports issued and renewed by areas of first destination July through December, 1958

Area of First Destination	Number	
Europe	168,244	
Middle East	5,785	
Africa	3,279	
Total passports issued and renewed for travel to points within the area covered by Docket No. 11908 et al		177,308
North, Central & South America	28,976	
Far East	16,233	
Australia and Oceania	13,497	
Total passports issued		236,014

Percentage of total passports issued and renewed which listed Europe, Middle East and Africa as areas of first destination—75.1%

Source: United States Department of State, Passport Office

17575

Trans World Airlines Exhibit No. TWA 13

Comparison of Competition
in Transatlantic and U. S. Transcontinental Markets

	Trans-atlantic (A)	Trans-continental (B)
Annual Passengers (C)	1,600,000	1,312,000
Number of Airlines	15 (D)	3
Passengers Per Airline	107,000	437,000

(A) To and from U. S.

(B) Between Boston, New York, Philadelphia, Baltimore and Washington on the one hand, and Los Angeles and San Francisco on the other hand

(C) 12 months ended June 30, 1961

(D) IATA airlines

Sources: IATA Reports
Competition Among Air Carriers, CAB

(19438)

19438

RECOMMENDED DECISION OF EXAMINER JAMES S. KEITH

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

In the matter of an investigation by the Board to determine whether the public convenience and necessity require the certification of one or more air carriers to engage in transatlantic passenger charter service, and if so, under what conditions should the service be authorized.

Recommended Decision of Examiner James S. Keith

Served: SEP 21 1962

Upon:

Perry H. Taft, Attorney at Law, 1 Larch Drive, Atherton, Calif., for Airline Transport Carriers, d/b/a California-Hawaiian Airlines.

Theodore I. Seamon, 700 Woodward Bldg., Washington, D. C., for Capitol Airways, Inc.

Norman L. Meyers (Meyers & Batzell), 1201 Shoreham Bldg., Washington 5, D. C., for The Flying Tiger Line, Inc.

Exceptions, if any, to this Recommended Decision must be filed with the Docket Section of the Civil Aeronautics Board, Washington 25, D. C., and served upon all parties within 10 days of service shown above. Briefs may be filed and served on all parties within 20 days after the date fixed for filing exceptions.

Albert F. Beitel, 905 American Security Bldg., Washington 5, D. C., for Modern Air Transport, Inc.

Ramsay D. Potts, Jr. (Shaw, Pittman, Potts & Trowbridge), 910—17th Street, N. W., Washington 6, D. C., for Overseas National Airways, Inc.

Robert E. Fraley (Keatinge & Sterling), 3325 Wilshire Blvd., Room 914, Los Angeles, Calif., for Great Lakes Airlines, Inc., and Paramount Airlines, Inc.

Warren E. Miller, Suite 30[illegible], 810—18th Street, N. W., Washington 6, D. C., for Quaker City Airways, Inc., d/b/a Admiral Airways, Inc.

Raymond J. Rasenberger, 500 Wyatt Bldg., Washington 5, D. C., for Riddle Airlines, Inc.

Robert M. Lichtman, 1144 Pennsylvania Bldg., Washington 4, D. C., for Saturn Airways, Inc.

19439

Joel H. Fisher, 1001 Connecticut Ave., N. W., Washington, D. C., for Seaboard World Airlines, Inc.

G. Nathan Calkins (Galland, Kharasch, Calkins & Lippman), 1824 R Street, N. W., Washington 9, D. C., for U. S. Overseas Airlines, Inc.

Jerrold Scoutt, Jr., 412 Cafritz Bldg., Washington, D. C., for World Airways, Inc.

Jerry W. Ryan, 135 E. 42nd Street, New York 17, N. Y., for Pan American World Airways, Inc.

Edmund E. Harvey (Chadbourne, Parke, Whiteside & Wolff), 25 Broadway, New York, N. Y., for Trans World Airlines, Inc.

Rocco C. Siciliano (Wilkinson, Cragun & Barker), 1616 H Street, N. W., Washington 6, D. C., for the American Society of Travel Agents, Inc.

Howard G. Feldman, Bureau of Economic Regulation, Civil Aeronautics Board, Washington 25, D. C., for the Bureau.

(19440)

19440

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

Recommended Decision of Examiner James S. Keith

It is Recommended that the Board—

I. Amend Part 207 of the Economic Regulations so as to authorize the certificated all-cargo carriers to engage in transatlantic passenger charter service under terms, conditions, and limitations corresponding to those provided for in Part 295 of the Economic Regulations as revised and contained in Appendix B hereof;

II. Issue to Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc. (upon compliance with the insurance requirements of Part 295.14(b) of the Economic Regulations)* temporary certificates of public convenience and necessity (expiring September 30, 1963) authorizing supplemental air transportation of persons and their baggage between points in the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia, as far east as (and including) India, on the other hand, subject to the requirements of Part 295 as revised and contained in Appendix B hereof;

---

* See Notice of Proposed Rulemaking dated September 4, 1962, EDR-43, for comparable provisions to Part 295.14(b).

III. Defer final decision with reference to the applications of Capitol Airways, Inc., Overseas National Airways, Inc., Saturn Airways, Inc., Modern Air Transport, Inc., U.S. Overseas Airlines, Inc., Quaker City Airways, Inc., d/b/a Admiral Airways, Inc., Airline Transport Carriers, Inc., d/b/a California-Hawaiian Airlines, and Paramount Airlines, Inc., until after the Board's decision on the collateral applications of these carriers under Section 401(d)(3) of the Federal Aviation Act, for authority to engage in supplemental air transportation;

IV. Revise Part 295 of the Economic Regulations in accordance with the draft contained in Appendix B hereof; and

19441

V. Deny the application of Great Lakes Airlines, Inc., Docket 11955, and dismiss the applications of The Flying Tiger Line, Inc., Docket 6668, Riddle Airlines, Inc., Docket 12152, and Seaboard World Airlines, Inc., Docket 11971.

Appearances:

Perry H. Taft, for Airline Transport Carriers, d/b/a California-Hawaiian Airlines.

Theodore I. Seamon, Joseph D. Sullivan and *Stephan L. Gelband,* for Capitol Airways, Inc.

Norman L. Meyers, and *Ivan V. Kerno,* for The Flying Tiger Line, Inc.

Albert F. Beitel and *John H. Pratt,* for Modern Air Transport, Inc.

Ramsay D. Potts, Jr. and *Stephen D. Potts,* for Overseas National Airways, Inc.

(19440)

19440

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

Recommended Decision of Examiner James S. Keith

It is Recommended that the Board—

I. Amend Part 207 of the Economic Regulations so as to authorize the certificated all-cargo carriers to engage in transatlantic passenger charter service under terms, conditions, and limitations corresponding to those provided for in Part 295 of the Economic Regulations as revised and contained in Appendix B hereof;

II. Issue to Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc. (upon compliance with the insurance requirements of Part 295.14(b) of the Economic Regulations)* temporary certificates of public convenience and necessity (expiring September 30, 1963) authorizing supplemental air transportation of persons and their baggage between points in the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia, as far east as (and including) India, on the other hand, subject to the requirements of Part 295 as revised and contained in Appendix B hereof;

---

* See Notice of Proposed Rulemaking dated September 4, 1962, EDR-43, for comparable provisions to Part 295.14(b).

III. Defer final decision with reference to the applications of Capitol Airways, Inc., Overseas National Airways, Inc., Saturn Airways, Inc., Modern Air Transport, Inc., U.S. Overseas Airlines, Inc., Quaker City Airways, Inc., d/b/a Admiral Airways, Inc., Airline Transport Carriers, Inc., d/b/a California-Hawaiian Airlines, and Paramount Airlines, Inc., until after the Board's decision on the collateral applications of these carriers under Section 401(d)(3) of the Federal Aviation Act, for authority to engage in supplemental air transportation;

IV. Revise Part 295 of the Economic Regulations in accordance with the draft contained in Appendix B hereof; and

19441

V. Deny the application of Great Lakes Airlines, Inc., Docket 11955, and dismiss the applications of The Flying Tiger Line, Inc., Docket 6668, Riddle Airlines, Inc., Docket 12152, and Seaboard World Airlines, Inc., Docket 11971.

Appearances:

Perry H. Taft, for Airline Transport Carriers, d/b/a California-Hawaiian Airlines.

Theodore I. Seamon, Joseph D. Sullivan and *Stephan L. Gelband,* for Capitol Airways, Inc.

Norman L. Meyers, and *Ivan V. Kerno,* for The Flying Tiger Line, Inc.

Albert F. Beitel and *John H. Pratt,* for Modern Air Transport, Inc.

Ramsay D. Potts, Jr. and *Stephen D. Potts,* for Overseas National Airways, Inc.

(19441, 19444)

Robert E. Fraley, for Great Lakes Airlines, Inc., and Paramount Airlines, Inc.

Warren E. Miller, for Quaker City Airways, Inc., d/b/a Admiral Airways, Inc.

Raymond J. Rasenberger and *Mitchell Strickler,* for Riddle Airlines, Inc.

Robert M. Lichtman, and *Samuel K. Abrams,* for Saturn Airways, Inc.

Richard A. Fitzgerald and *Joel Fisher,* for Seaboard World Airlines, Inc.

G. Nathan Calkins, for U. S. Overseas Airlines, Inc.

Jerrold Scoutt, Jr., for World Airways, Inc.

Jerry W. Ryan, for Pan American World Airways, Inc.

Edmund E. Harvey, for Trans World Airlines, Inc.

Rocco C. Siciliano, for the American Society of Travel Agents, Inc.

Howard G. Feldman, for the Bureau of Economic Regulation.

• • • • •

19444

INTRODUCTION

This is an investigation instituted by the Board for the purpose of determining whether the public convenience and necessity require the certification of one or more air carriers (other than carriers certificated to provide unlimited passenger service over designated routes) to engage in transatlantic passenger charter service to and from points within the United States, and if so, under what conditions should the service be authorized. In issue are the applications of eight supplemental air carriers, three certificated

all-cargo air carriers, a carrier holding interim operating authority as a large irregular air carrier and a former large irregular air carrier whose operating authority has been revoked.[1]

After leave to intervene was granted to Pan American World Airways, Inc. (Pan American), Trans World Airlines, Inc. (Trans World), the American Automobile Association and the American Society of Travel Agents (ASTA), and copies of the applications transmitted to the President of the United States in accordance with Section 801 of the Federal Aviation Act of 1958, as amended, a public hearing was held and briefs were filed.

19445

THE ISSUES

The geographical scope of this case is limited to the traditional boundaries of transatlantic route proceedings. As defined in the Supplemental Order of Investigation and Consolidation,[2] it encompasses the 48 contiguous States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The basic substantive issues are those raised by Section 401 of the Act; they are defined by the order in question as—

(a) Whether the public convenience and necessity require the certification of one or more air carriers

[1] At the time of the public hearing 25 applications were in issue in this case. However, 12 applicants failed to prosecute their respective proposals and the Board subsequently dismissed them in Order E-18319, adopted May 9, 1962.

[2] Order E-17190, adopted July 18, 1961.

to perform transatlantic passenger charter flights and, if so, which carrier or carriers should be selected to perform such transportation and what terms, conditions, or limitations should be attached to such certification, and

(b) Whether the various applicants for transatlantic passenger charter authority are fit, willing and able to perform such transportation properly, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations and requirements of the Board thereunder.

With reference to any terms, conditions and limitations that might be attached to any certificate the Board has included the subsidiary question of the suitability of Part 295 of the Economic Regulations for a long-range charter program. The only limitation on any proposed changes in

Part 295 is that they must fall within the broadly accepted meaning of charters and not involve individually-ticketed services directly by the carriers.[3] Thus, proposals which contemplate charters by professionals engaged in the formation of groups for transportation (travel agents) currently prohibited under Part 295 are within the issues,[4] and proposals involving split-charters to so-called "affinity" and "spontaneous" groups are also acceptable.[5]

---

[3] Order E-17607, adopted October 18, 1961.

[4] *Ibid.*

[5] Order E-18121, adopted March 19, 1962.

THE APPLICANTS

Background. Applicants are one of three groups of carriers which provide the bulk of transatlantic passenger charter service. They came into existence as a class when the Board announced a new policy in 1955 called the Transatlantic Charter Policy which established them as an additional category of carriers to provide transatlantic charter services. Under that new policy the supplemental and all-cargo carriers became eligible to provide transatlantic passenger charters upon obtaining individual exemptions from Section 401 of the Act to provide each charter.[6]

19447

Since the establishment of its Transatlantic Charter Policy in 1955 the Board has redefined and amplified the standards for charter eligibility. Generally, these standards have followed the rules of the IATA carriers as approved by the Board. In 1959 these standards, with minor modifications, became Part 295 of the Board's Economic Regulations. Following its decision in the *Foreign Off-Route Charter Investigation,*[7] in which foreign air carriers were for the first time authorized to perform off-route charters in air transportation, the Board promulgated Part 212 of the Economic Regulations which established charter standards for the foreign flag carriers similar to those applicable to the Part 295 carriers. The next year after the IATA carriers improved their charter standards

[6] The U. S. flag multiple service route carriers are not required to obtain individual exemptions since they possess statutory authority to provide off-route charters subject to Board regulations. They have been regulated under Part 207 of the Economic Regulations since 1951.

[7] 27 CAB 196, (1958).

at the Board's request, Parts 295 and 212 were modified to conform in substantial respects with the IATA requirements.

In 1961 Part 295 was again revised, this time to provide for individual seasonal exemptions in place of individual exemptions for each charter. This regulation is currently in effect, providing for 180-day individual exemptions (terminating not later than September 30 of any year) to those supplemental and all-cargo carriers which are applicants in good standing in the instant proceeding.

It appears that this revision of Part 295 was occasioned by the Board's decision to institute this proceeding and its conclusion that (1) retention of the power to disapprove individual charter flights was no longer administratively

necessary and (2) the economic and administrative burden in obtaining approval for each flight so handicapped the small carriers as to effect their ability to operate the services profitably.

As may be noted from the historical sketch of each applicant as hereinafter follows, very few have consistently availed themselves of the authority conferred by the charter regulations. For the 1962 tourist season 10 of them filed applications for seasonal exemptions but only five were approved.[8]

---

[8] The applications of ONA, Riddle, Saturn, Flying Tiger and Capitol were approved while those of Seaboard, Admiral, Cal-Hawaiian, USOA, and Paramount were denied. The latter, except for Seaboard were denied because of lack of definite plans for charters. Since Seaboard's contracts for charters had been reassigned to another carrier the Board found that it had no substantial program. Order E-18390 adopted May 20, 1962.

Capitol Airways, Inc., (Capitol) has been engaged in air transportation service since 1946. It is one of the larger supplemental air carriers, holding a five-year certificate[9] and operating a fleet of 10 owned and 3 leased Constellations and 15 owned and 2 leased C-46's.

In the early years of its existence Capitol operated a flight and ground training school along with its charter service with light aircraft. In addition, it maintained sales, servicing and maintenance facilities. In 1951 it branched out into the domestic military charter field and this busi-

19449

ness has been a segment of Capitol's overall operations since that time. It became a "Logair" contractor in 1954 and while its participation in this business has varied from year to year some idea of its important to Capitol can be gleaned from the fact that Capitol presently utilizes 13 C-46's in this operation. Capitol has also steadily increased its participation in international military contract service. Currently, it provides overseas service for MATS with its Constellation fleet and it is also a CRAF contractor.

Although Capitol operated a few transatlantic charters in 1958, it did not seriously enter this field until 1959. Its

---

[9] This certificate and those of the other supplemental carrier applicants hereinafter referred to, as well as the interim operating authority of Airline Transport Carriers, Inc., were cancelled by Public Law 87-528 enacted July 10, 1962, 76 Stat. 143, 30 days after enactment. However, authority to continue operations on an interim basis pending future certification under Section 401(d)(3) of the Federal Aviation Act (which section was established by the new legislation) was provided for upon compliance with certain prescribed procedure.

(19449, 19450)

charter record from that time through 1961 is shown in the table below:

Year	Transatlantic Charter Flights	Transatlantic Roundtrip Charters	Passengers Carried
1959	71	33	6,428
1960	101	45	8,085
1961	87	31	8,375

To support its overseas operations Capitol maintains a base at the Greater Wilmington Airport which is leased for a period of 9 years terminating in 1968. This base includes hangar facilities for maintenance of its Constellation aircraft and a substantial inventory of rotatable and spare parts. Maintenance personnel (which consists of, among others, mechanics and experienced supervisors) number in excess of one-hundred. This base also includes a flight and ground training school for pilots, flight engineers, navigators, engineers, and stewardesses.

Capitol's sales department is composed of seven persons, two of whom are stationed at Nashville, two in the New York sales office, two at the Chicago sales office and a European manager stationed in Paris. In addition, its

19450

president and two other high-ranking officers are engaged in sales activities. However, promotion of its transatlantic charters has been confined to contact efforts with agents and organizations through personal visits and approaches by mail (including charter-brochure mail).

Overseas National Airways, Inc. (ONA), like Capitol, is one of the larger supplemental air carriers; it holds a five-year certificate.[10] ONA has been engaged in air trans-

[10] See footnote 9 *ante*.

portation service since 1947, during which time it has focused its efforts primarily on the development of military business. Only for a brief period has its operations been weighted in favor of civilian commercial services. This was in 1957 and 1958. In 1959 it again concentrated its activities in the direction of military business and the bulk of its service has been in this area since that time. For example, of a total of 405 million revenue passenger miles flown in 1959, approximately 333 million were operated in international military transport service. Correspondingly, of 1.121 billion revenue passenger miles operated in 1960, nearly 1.100 million were flown for the military services.

Despite its concentration in the military area ONA was the largest Part 295 operator in 1958 and 1959. In those years it flew 250 and 140 charter flights, respectively. However, because of low fares and excess equipment available from foreign carriers in 1960 ONA decided to curtail its charter operations. Hence, it operated only 10 flights in 1960 and only three in 1961. Because of the capacity which

19451

others would offer in 1962 and the impending group fares ONA decided against entering the market on any large scale in that year.

ONA's operations are conducted with leased equipment; it does not own any aircraft. At the time of hearing it leased 10 DC-7's from the General Aircraft and Leasing Division of General Dynamics Corp., (GALCO). The terms of the lease call for its expiration in June 1962 but ONA states that it will enter into negotiations to extend the lease. In addition, it has taken delivery on two other such

aircraft under leases with Douglas Aircraft and GALCO, respectively.

ONA also has a lease arrangement with Flying Tiger for the use of two Canadair CL-44 aircraft. This lease is for one year extending from the date of delivery of the aircraft. So far these aircraft have not been delivered to the applicant, and it appears that the matter is in dispute between the applicant and Flying Tiger.

ONA's principal operating base is at Oakland National Airport, Oakland, California, and its organization at that point consists of a large compliment of flight personnel and a number of other employees. In New York ONA employs a small force consisting of station and passenger service personnel. During 1949 when it was engaged in transatlantic charter service, this force was augmented by 48 additional employees. Besides New York, a small force, including the president and his staff, have offices in Washington where financial and corporate records are maintained.

19452

Saturn Airways, Inc., (Saturn) holds a two-year certificate to engage in air transportation as a supplemental air carrier.[11] It was incorporated under the laws of the State of Florida in 1948, and has been engaged in air transportation services since that time. It was originally known as All-American Airways, but in November 1960 it changed that designation to its present name.

For a short period in 1948 Saturn engaged in infrequent individually-ticketed operations between New York and Puerto Rico. When C-46 aircraft were acquired by the company, laborers were transported under contract from

[11] See footnote 9 *ante*.

Puerto Rico to points in the United States. From 1951 to 1959 the company's aircraft were operated principally under contract with military establishments. During this period approximately 95 percent of Saturn's revenue was derived from CAM business.

In 1960 Saturn acquired two DC-6B aircraft and entered the domestic charter business. For the fiscal year ended June 30, 1961, its domestic charter business consisted of 9 percent of the company's total revenue for that period.

In 1961 it established sales offices in New York and London and entered the transatlantic charter business. In 1961 it operated 17 transatlantic charter flights and during the 8 months period ended February 28, 1962, Saturn's transatlantic charter program accounted for 20 percent of its total revenue.

19453

Saturn's present fleet consists of two DC-6B aircraft and three C-46's. The DC-6B's are owned by the company and also two of the C-46 aircraft are owned.

Saturn uses between 25 and 37 employees in its organization. The number varies according to the season of the year and it includes, among other employees, a sales representative in New York, a sales manager and secretary in London, England, 8 pilots, 4 flight engineers and one navigator. Saturn's aircraft are maintained under a contract with the All-American Maintenance, Inc., a repair station in San Antonio, Texas.

World Airways, Inc., (World) holds a five-year certificate as a supplemental air carrier.[12] It was incorporated in 1948 and has engaged in various types of operations since that time including individually-ticketed common carriage

[12] See footnote 9 *ante*.

services and service for the military; the latter, embracing principally MATS, CAMS and Logairs, has been the mainstay of World's operations.

World has not engaged in transatlantic charters allegedly because of equipment limitations, low fares and excessive competition. It has performed some transatlantic passenger flights between Newark, N.J., and Germany under contract with MATS. These flights were operated on a scheduled basis.

World's main base of operations is located at the Oakland Metropolitan Airport where it maintains its executive, accounting, operations, and dispatch and training offices. Its maintenance facilities are located at Oakland. In addition,

19454

the company has an operations office in Honolulu and a sales office in Los Angeles.

At the time of the hearing World's payroll consisted of 275 to 280 employees, most of whom are flight personnel. Its executive, administrative, and sales offices consist of 10 employees.

The company presently operates a fleet of eight Douglas DC-6a/b's and five Lockheed 1049-Super Constellations. It owns five of the DC-6's, and on June 7, 1962, it executed a contract with the Booth Leasing Corp., San Francisco, Calif., calling for the lease (with option to purchase) of two 707-320C turbo-fan jet aircraft, five spare engines and spare parts. The estimated amount of the contract is $16 million with World being required to deposit 20 percent or $3,200,000 by September 28, 1962. According to the testimony of World's Director of Finance these aircraft will be in convertible passenger cargo configuration and will be capable of carrying 189 passengers.

(19454, 19455)

Modern Air Transport, Inc., (Modern) is a small supplemental air carrier holding a two-year certificate.[13] It was incorporated under the laws of the State of New York in 1946 and began services on an irregular basis in 1947 with headquarters at Miami. In 1950 Modern transferred its organization from Miami to Newark, and in April 1962 it moved to Mercer County Airport at Trenton, N. J.

19455

Prior to 1952 Modern's operations consisted of individually-ticketed passenger services and charters. The former were concentrated in the New York-Miami and New York-San Juan markets and were held to be in violation of the Civil Aeronautics Act. After a change in ownership and management in 1952 Modern discontinued the violations and focused its activities on CAM movements. Its principal business was in this area until 1960. This is illustrated by Modern's record for the period 1957 thru 1960. In 1957 it operated 17.283 million revenue passenger miles in CAM operations and only 958,000 miles in domestic charters and common carriage. In 1958 it increased its participation in domestic charters and common carriage, operating approximately three million revenue passenger miles in these fields as against 15.892 million revenue passenger miles in CAM's. In 1959 Modern's common carriage and domestic charter services accounted for over four million passenger miles while CAM movements produced 12.230 million miles. In 1960 Modern's CAM program declined to less than seven million revenue passenger miles. Common carriage service, on the other hand, developed nearly 14 million revenue passenger miles while domestic charters produced nearly two million.

[13] See footnote 9 *ante*.

(19455, 19456)

In 1961 Modern operated four C-46's. However, it disposed of three of these and acquired five Constellations, two of which were made operational and the remaining three dismantled for spare parts. Modern's fleet of aircraft as of December 31, 1961, consisted of one leased C-46 and two owned L-1049 Constellations. Its organization consists of 33 employees, four of whom are in the general and administrative department, six in operations and maintenance and 23 in flight personnel. Its general and adminis-

19456

trative personnel also act as Modern's sales organization, and procures its domestic charter business.

U. S. Overseas Airlines, Inc., (USOA) is one of the larger supplemental air carriers holding a two-year certificate.[14] It was incorporated in 1950 and commenced operations in 1951 under a letter of registration which was originally issued in 1947 to Ralph W. Cox, d/b/a Ocean Air Tradeways. During its existence USOA has engaged in both commercial and military operations and beginning in 1957 it participated in all phases of domestic and overseas air transportation open to supplemental air carriers. Domestically it has operated CAM services, cargo services for the Navy between the major naval bases in the U. S., planeload commercial charters for a wide variety of groups, and regular limited individually-ticketed services between major points in the United States.

Its international and overseas services during the period 1957-61 included transatlantic and Pacific charters, MATS augmentation airlift in the Pacific, and limited aircoach services between California and Hawaii. These operations for the period from January 1957 thru September 1961

[14] See footnote 9 *ante*.

accounted for 116,000 passengers and 316,791 million revenue passenger miles. Included were nine one-way transatlantic charters in 1957, eighteen in 1958, two in 1959, ten in 1960, and six in 1961.

19457

USOA's 1960 common carriage services, which consisted of individually-ticketed service and commercial and private charters, amounted to 41 percent of its business. The balance of its operations were in CAM movements, Quicktrans operations, and MATS services. In 1961 the division was 42 percent common carriage and 58 percent military. As of March 10, 1962, USOA's MATS operations were suspended by the military for unsatisfactory performance and contradictory financial information.

In recent years USOA has maintained a force of nearly 300 employees. In the first half of 1961 it had as many as 577 employees. However, it was suggested that a large number of these employees were specialists in the Navy's Quicktrans program and when Slick was selected to operate this program in 1962 these specialists went over to Slick.

USOA's executive, sales, and accounting offices and its principal operations and maintenance base are located at Cape May-Wildwood Airport, Wildwood, N. J. The employees at this base account for a large part of USOA's organization which also includes a tour sales counter at LaGuardia Airport. USOA maintains a ticket office in Detroit and counter space at Willow-Run Airport.

Oakland is the location of USOA's west coast maintenance base. Counter facilities are also maintained at the airport. USOA also has sales offices and ticket counters in Burbank and Honolulu.

At the time of hearing USOA owned eight C-54 aircraft and six DC-6's. It leased two C-54's.

(19458, 19459)

19458

Quaker City Airways, Inc., d/b/a Admiral Airways, Inc., (Admiral) holds a 2-year certificate as a supplemental air carrier.[15] It was organized in 1946 under the laws of the State of Pennsylvania and has engaged in air transportation on an intermittent basis since that time. For a period of about one year between 1952 and 1953 Admiral did not engage in air transportation services and its operations were suspended for a brief period in 1956. In 1957 and 1958 a limited number of flights, both in individually-ticketed and for the military, were performed with C-46 aircraft; and a limited number of cargo flights were flown in the first part of 1960. However, no services were operated in 1959, or in the latter part of 1960 or early 1961.

The present management took over the company in June 1961, immediately leased two L-749 Constellations from California Airmotive Corp., and began individually-ticketed services. These services were expanded, and in December 1961 Admiral's new management leased two DC-6's from Nevada Aero Trades Company. On February 14, 1962, Admiral leased an additional DC-6 and in that month it performed a substantial number of CAM charters in addition to its individually-ticketed services. In April Admiral added a third Constellation to its fleet of leased aircraft bringing the total number up to three DC-6's and three L-749's.

According to the president of the company the DC-6's have been allocated to the CRAF program and Admiral is presently awaiting security clearance preparatory to executing standby-and-call contracts with MATS. As of

19459

December 31, 1961, Admiral's organization consisted of 68 employees, 60 of whom were in flight personnel.

---

[15] See footnote 9 *ante.*

Airline Transport Carriers, Inc., d/b/a California-Hawaiian Airlines (Cal-Hawaiian) is presently operating as a supplemental air carrier under interim operating authority.[16] Except for two brief interruptions in its service during 1951-52 (when it suspended operations pending the disposition by the Board of a Section 408 application for control of the applicant and California-Central Airlines) and in 1955 (when these companies were adjudicated bankrupt) Cal-Hawaiian has engaged continuously in air transportation since 1946. During this time it has used DC-3, DC-4, Martin 202 and recently Lockheed Constellation aircraft.

Cal-Hawaiian's operations in 1957 were comparatively light, yielding only a little over $100,000 in revenue. In 1958, with contracts and charters accounting for $1,300,000, Cal-Hawaiian experienced one of its best years in operations. In 1959 it operated two transatlantic charter flights which increased to 35 in 1960 and declined to 13 in 1961. These charters were in addition to individually-ticketed and other charter services.

During most of 1961 Cal-Hawaiian employed around 60 employees. However, at the time of hearing its personnel numbered around 45. Its aircraft fleet consisted of one leased L-1049 Constellation with a seating capacity for 104 passengers. Two other similar model Constellations which had been purchased previously under a conditional sales

contract with TWA were returned because of failure to meet payments. The secretary-treasurer of Cal-Hawaiian testified that the market price of these Constellations declined to such a point that it was more favorable for Cal-

[16] See footnote 9 *ante*.

Hawaiian to return the aircraft to TWA and to negotiate with TWA for a cash buy-out at a substantial reduction in price.

Paramount Airlines, Inc. (Paramount) is an indirect successor to Paul Mantz Air Services which prior to October 1960 was an individual proprietorship owned by A. Paul Mantz. At that time the Board approved the transfer of the proprietorship to Paul Mantz Air Services, Inc., a corporation which had been organized in 1956 to engage in fire-fighting flight operations, air-to-ground photographic mapping enterprizes, and the production of films for the movie industry. On October 18, 1961, the certificate of incorporation was amended so as to change the name to that of the present applicant.

Paramount has an authorized capitalization of 75,000 shares of common stock at a par value of $1 per share. There is currently issued and outstanding 25,000 shares which are owned by Theo. O. Bodwell, president and director of the company and a former pilot for Great Lakes Airlines, Inc. Bodwell procured the stock and debentures in the amount of $60,000 from A. Paul Mantz on February 11, 1961. The price paid for the stock and debentures amounted to $50,000. This sum was borrowed from Pierce O'Carroll a longtime friend of Bodwell's. According to the testimony, the loan has been repaid by Bodwell with salary proceeds and funds obtained by cashing some of the debentures.

19461

Paramount commenced domestic flight operations on an individually-ticketed basis on or about March 23, 1961, utilizing an L-1049 Constellation aircraft. After leasing two L-749 Constellations during May and June of 1961, Paramount cancelled the lease of the L-1049 aircraft. It operated

thereafter with the two L-749's, using one in CAM operations.

In February and March 1962, Paramount leased two DC-7C aircraft and plans to acquire an additional DC-7CF cargo convertible type aircraft.

Great Lakes Airlines, Inc. (Great Lakes) was organized in 1940 succeeding a partnership by the same name which began operations in 1945. It continuously engaged in air transportation services from 1945 to December 1961 when its operations terminated as a result of governmental action.

Great Lakes is owned by Captain I. E. Hermann and Mrs. I. M. Hermann who also own Great Lakes Airlines Maintenance Corp. which has performed major maintenance aircraft work for Great Lakes and other supplemental air carriers. The Hermann's also operate, as a partnership, Nevada Aero Trades Company which owns three DC-6 aircraft now under lease to Admiral Airways. They also own all of the stock in California Airmotive Corporation which, in turn, owns five Lockheed L-749 Constellations. Two of these aircraft are leased to Paramount and the other three to Admiral Airways.

While Great Lakes is not actively engaged in air transportation at this time and has only a skeleton organization which allegedly is winding up the affairs of the company, the secretary-treasurer testified that, since California Air-

motive Corporation and Nevada Aero Trades Company are solely owned by the Hermanns, there would be no problem in reorganizing the Hermann enterprizes so as to make Great Lakes immediately operational with DC-6 and Constellation aircraft.

(19462, 19463)

Riddle Airlines, Inc. (Riddle) is a certificated all-cargo air carrier which holds authority to engage in both domestic and overseas air transportation. Its certificate for route 120 authorizes property and mail (nonsubsidy) services between the northeast United States and the Great Lakes, on the one hand, and Florida on the other; and its certificate for route 109 covers similar authority for services between New York and San Juan via Miami.

Although Riddle has engaged in air transportation for over ten years its first experience as a passenger operator came in the summer of 1960 when it converted one of its three DC-4 aircraft to passenger configuration and flew 18 one-way transatlantic charters for nearly 5 million revenue passenger miles. In the late summer of 1960 Riddle began altering its DC-7F cargo aircraft so as to make each aircraft a convertible vehicle capable of carrying either cargo or passengers or both. These aircraft were used in its transatlantic charter program in 1961 which covered 27 one-way flights and 11.729 million revenue passenger miles. At the time of hearing Riddle's 1962 transatlantic charter program embraced signed contracts for 226 one-way charters. Approximately 180 of these charter trips will be European originated.

19463

Riddle's main base of operations is located at Miami, Florida. Its transatlantic sales force is maintained in Washington, D. C., where a staff of five sales and administrative personnel are located. Riddle also has major sales offices in New York, Los Angeles, London, and Frankfurt, and maintains cargo-passenger sales offices in several other major cities in the United States.

Riddle's total personnel at the time of hearing numbered between 800 and 900 employees. This was a decline of

several hundred employees due to the temporary suspension of Riddle's common carriage operations at Chicago, Cleveland, Boston, Indianapolis, Tampa/St. Petersburg, Atlanta, and Philadelphia.[17] Normally, Riddle has in the neighborhood of 1100 or 1200 employees. Riddle's aircraft fleet consists of ten DC-7F aircraft with a seating capacity for 99 to 114 passengers and it also has seven Argosy cargo aircraft which it uses in its military Logair operations plus 30 C-46's and one DC-4.

The Flying Tiger Line, Inc. (Flying Tiger) is the country's leading domestic all-cargo carrier. It holds a certificate for Route 100 which extends from the major cities on the east coast through the midwest to the principal points on the west coast. It has engaged in air transportation since 1948 during which time it has provided a highly diversified operation. It has engaged in substantial common carriage freight services and has performed extensive passenger and cargo operations for the military as well as commercial passenger and cargo charters.

19464

It engaged in transatlantic charters before the Board's Transatlantic Charter Policy. However, it was not until 1957 that it entered the transatlantic charter market on a large scale. Between 1957 and 1961 it operated a total of 433 one-way transatlantic charters which was the largest number of charters performed by any Part 295 carrier during that period. Flying Tiger led the field in 1957 and 1961 and was second to ONA in 1958. In 1959 and 1960

[17] By Order E-18184, adopted April 5, 1962, the Board authorized Riddle to suspend services at these points until December 31, 1962.

Flying Tiger decided not to aggressively pursue transatlantic charters because of the rate situation and competition from foreign carriers. In those two years it operated only 43 one-way charters.

In terms of personnel Flying Tiger is the largest of the Part 295 carriers. It has nearly 1200 employees. Flying Tiger maintains a year-round full-time sales office in New York City and it has a year-round sales representative in London and Frankfurt. At the time of the hearing Flying Tiger's aircraft fleet consisted of 12 1049H Super Constellations, 10 Canadair CL-44 turboprop aircraft and one C-46. The Constellations will be sold as soon as Flying Tiger has "a reasonable offer."

Seaboard World Airlines, Inc. (Seaboard) is a certificated all-cargo carrier holding authority to engage in foreign air transportation over Route 119 which extends from New York to points in the British Isles and Western Europe. It has held this authority since 1955. However, Seaboard has been operating transatlantic air services since August 1947 providing both cargo and passenger operations. It began scheduled commercial all-cargo services over

Route 119 in April 1956 and has continuously provided this service since that time. In addition, it has rendered substantial passenger and cargo services for the military as well as limited civilian passenger charters to groups and to several foreign flag carriers. Among the civilian passenger charters performed directly for groups were 87 one-way transatlantic charters during the period 1957 through 1961.

Seaboard's main operating base is at New York where it employs 829 flight and ground personnel. In Europe Seaboard maintains offices in 17 cities and these offices are staffed with approximately 250 employees. Seaboard's total organization consists of approximately 1100 employees. Sales offices are located in Los Angeles, San Francisco, Atlanta, Boston, Chicago, New York, Cleveland, and Dallas; and in Europe—Austria, France, Germany, Ireland, Switzerland, and the United Kingdom.

Seaboard has an aircraft fleet of five Canadair CL-44's, and one C-46. These aircraft are equipped for conversion to passenger configuration.

Proposals (Geographical Scope and Plan of Operations). In response to a request of the Bureau of Economic Regulation each of the applicants submitted a proposed form of certificate, which, among other things, delineates the geographical area within which the transatlantic charter service would be authorized to operate. These certificates show that eleven of the applicants seek the broadest possible geographical coverage within the issues of the case, with nine of them proposing authority in precisely the same

language as that used by the Board in defining the geographical scope,[18] viz,

> Between points within the 48 contingent States of the United States, on the one hand, and points between Greenland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

[18] Order E-17190, *supra*.

(19466, 19467)

Flying Tiger and California-Hawaiian advocate a more detailed description of the countries to be served. The former would specifically name the coterminal points in the United States and all of the foreign countries to be served. Only Admiral and Paramount seek less than the maximum area that could be authorized; they do not propose to serve some of the countries in Asia and Africa.

At the prehearing conference the Bureau requested the applicants to submit their proposals, particularly their traffic and financial forecasts, on the basis of three assumptions: (1) That only one carrier would be certificated, (2) that three carriers would be certificated, and (3) that six carriers would be authorized. Most applicants complied with the request, and most of them agreed that the Part 295 authorizations should not extend to all of the applicants. Several, however, were of the opinion that there should be no limitation on the number authorized. Seaboard took the position that a single carrier, viz, Seaboard, should be certificated. The consensus of opinion among those taking a position on the number of carriers that should be authorized is that more than three but no more than six should be certificated.

19467

Appendix A sets forth in some detail each applicant's plan of operation. It will be noted that initially most of them plan to use piston engine aircraft, either DC-6's, DC-7's, or L-1049 Constellations. Two of the all-cargo carriers, viz, Seaboard and Flying Tiger, propose to use the turbo-prop Canadair CL-44's in the event they do not use Constellations; and Riddle, if traffic conditions warrant, plans to acquire pure jets, DC-8's or 707's and integrate them with DC-7's. World has entered into a lease for the

707's to be delivered in mid-1963 and these will be worked into its proposed charters.

The requirements on the number of aircraft needed vary considerably under the assumption that a single carrier may be authorized. Capitol estimates that it would need only seven Constellations. Under the same conditions ONA would require 13 DC-7's, Saturn 15 DC-7's, and USOA 18 DC-6's. According to Riddle it would need four DC-7's and two jets. As one of three carriers authorized, the number of aircraft estimated to be required vary from three to six and as one of six carriers the range is from two to four.

Most of the applicants estimate operating profits in excess of $1 million on the assumption of being the sole carrier selected and from $325,000 to $2,170,000 as one of three carriers authorized. As one of six carriers the operating profit range would be reduced substantially.

19468

Proposals (Amendments to or modification of Part 295). As mentioned earlier applicants are a class of carriers whose transatlantic charter authority is regulated by Part 295 of the Economic Regulations. As presently written these regulations define a "charter flight" as transatlantic air transportation performed by a direct air carrier where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage, on a time, mileage, or trip basis: (a) by a person for his own use,[19] or (b) by a representative (or representatives acting jointly) of a group for the use of such group (pro-

[19] The definition states that this includes a direct air carrier or surface carrier when such aircraft is engaged solely for transportation of company personnel and commercial passenger traffic in cases of emergency.

vided no such representative is professionally engaged in the formation of groups for transportation or in the solicitation or sale of air transportation services.) This definition covers (a) pro rata charters where the cost is divided among the passengers transported, (b) single-entity charters where the cost is borne by the charterer and not by individual passengers, and (c) mixed charters where the cost may be borne partly by participants and partly by the charterer.

In procuring the pro rata or mixed charters, carriers may not engage, directly or indirectly, in any solicitation of individuals (either through personal contacts or otherwise) and they may not employ, either directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group

19469

to make the charter flight. Solicitation must be confined to the chartering organization and must be limited to bona fide members of such organization and their immediate families,[20] except for colleges and universities located in one local area, the chartering organization must not have a membership in excess of 20,000.

Travel agents may not be used in organizing or assembling charter groups; nor may travel agents sell air transportation to any individual members of a group or otherwise engage in the administration of a charter flight. They may, however, arrange land tours for the chartering group as a whole and, in certain circumstances, arrange land tours for individual members of a group. The service

[20] Immediate family is defined as the spouse, dependent children, and parents of such members living in the same household.

of the travel agent may also be utilized to prepare brochures or other literature describing all aspects of the charter trip, but distribution of the material to individual participants must be confined to the charterers.

As pointed out previously one of the considerations in this proceeding is the suitability of Part 295 for a long-range transatlantic program. The Board, in Order E-17190, specifically invited the applicants and all parties to address themselves to this problem and to advance, within the broadly accepted meaning of charter, any new concepts which they may consider appropriate. In response to this invitation applicants and ASTA have come forward with several proposals for revising the regulations, including an amendment which would authorize split charters. The

19470

purpose of this amendment is to give the Part 295 carriers a new type of authority which would parallel in major respects the authority of the IATA carriers under the IATA Group Fares which was recently approved by the Board.[21]

The group fares, which establish a 38 percent discount on round trip economy fares, are applicable to "affinity" and "spontaneous" groups of 25 or more persons who travel in economy class across the northatlantic on a round trip basis. "Affinity" groups, as defined by the group fares, are those whose members belong to the same association, organization, company, corporation, or other legal entity which have principal purposes, aims, and objectives other than travel. Generally speaking, they are the same as those

[21] These fares were provided for in IATA Resolution 088n (Agreement CAB 16205) approved by Order E-18224, dated April 16, 1962.

charter groups or organizations which meet the standards of eligibility for pro rata charters under Parts 295 and 212. The "spontaneous" group, on the other hand, has no counterpart under Parts 295 or 212. It is defined by the group fares as any group of persons which has neither been publicly solicited, (either directly or indirectly) by the carrier, the travel organizer, a member of the travel group, an agent, or representative of any of them.

19471

The applicants, other than USOA,[22] propose that their charter authority be extended to groups of 25 persons or more[23] and that spontaneous groups be declared eligible as well as the present affinity groups. They would define "affinity" and "spontaneous" groups substantially as those terms are used by the IATA carriers.[24]

Another important proposal of the applicants as well as ASTA is a modification of the present restrictions on travel agents so as to permit them to charter aircraft for the movement of groups on all-expense paid tours organized and publicly solicited by them. ASTA suggests that this modification be accomplished by creating a third-class of charters to be known as the package tour charter. This

[22] USOA proposes that there be no restriction on the charters other than that the charter consist of a planeload of passengers. Under USOA's proposal a travel agent could charter an aircraft for the movement of passengers generated by such travel agent regardless of whether the passengers were on an all-expense tour or whether they were traveling on an individual basis or in a single group or several groups.

[23] Great Lakes would set the minimum size group at 20 persons.

[24] Saturn's and Modern's definition would permit spontaneous groups to be gathered through solicitation of members of such groups which is not allowed under the IATA definition.

classification which ASTA would establish for an experimental period of three years would cover a pleasure tour from the United States to one or more of the transatlantic foreign countries and return, the price for which would include round trip transatlantic transportation and all other transportation during the tour, escort service at each stopover, hotels or other accommodations, meals and sightseeing trips. It would require stopovers in at least two

19472

different cities and a tour for at least 13 days. Tour members would be required to travel as a unit and would have to pay the agent cash in full at least 30 days before departure or in any event before actual commencement of the tour. Once a member begins the tour no refund would be allowed which would bring the cost below the minimum required price of the tour. The price for the entire tour package, according to ASTA, should not be less than the lowest prevailing IATA fares from the point of origin to the furthest tour point and return.

In addition to the all-expense tour proposal ASTA recommends the repeal of those provisions of Part 295 which prohibit travel agents from assisting in the organization or assembly of a charter group or soliciting individual members of a pro rata charter for special land tours and which prevent travel agents from being paid a commission where they are members of a charter organization.[25] Seaboard would permit travel agents to solicit, promote, and engage in the administration of charter flights for bona

[25] ASTA also recommended that a new section be added to the provisions of Part 295 so as to define the purpose of charter flights. However, it did not introduce evidence on this proposal or allude to it on brief.

fide charter groups, including the signing of agreements for the charterer or collecting or dispersing pro rata charters of participants.

Other minor proposals include (a) a suggestion by Capitol for a rate standard requiring each group on a split charter to bear its pro rata charter on the cost of the entire aircraft; (b) a recommendation by Riddle for a minimum

19473

rate regulation to protect the IATA carriers and the applicants from a further deterioration in the rate structure; (c) a proposal by ONA and others that any bona fide organization regardless of size, location and other qualifications, should be permitted to form one or more affinity groups. Riddle has a similar recommendation. It would permit bona fide groups, such as last year's British Bar Association, to charter aircraft irrespective of size, provided the trip is business or convention rather than pleasure or tourist; and (d) suggestions by Riddle (1) to make possible the carriage of U. S. and NATO personnel or charters where the travel is certified by appropriate military officials (2) to eliminate restrictions on seasonality, and (3) to increase commissions payable to agents to 7.5 percent.

Position. Applicants contend that the transatlantic charter market is a dynamically growing segment of the air transportation business and that it has a substantial future potential. They credit the Part 295 carriers with a significant role in the development of this market and claim that such carriers have acted as a spur to better service and lower fares by the IATA carriers. Hence, applicants maintain that their continued presence in this field is required

if the IATA carriers are to have competitive stimulus and the low fare service fully exploited.

Although they concede that the IATA group fares will have an adverse impact on the transatlantic charter market they take the position that such fares have not eliminated the need for charter service. They allege that the group fares are temporary and experimental and that

19474

there is no assurance that such fares will be extended beyond March 31, 1963, the present termination date. Since the group fares do not permit weekend travel they contend that many groups, such as industrial employees who begin their vacations on weekends, would not be able to take advantage of the group fares. In addition, applicants point out that the group fares do not apply to off-route points,[26] and that they will be substantially higher than charter rates. Hence, they will not attract European groups.

As to diversion, applicants contend that historically the transatlantic charter market has been non-diversionary since experience will show that the regular route carriers have turned down and are continuing to turn down substantial amounts of charter business for equipment or other reasons.

As previously pointed out, applicants contend that Part 295 should adopt a broad concept of charters including "split" charters and the chartering of aircraft by travel agents or tour operators for all-expense group tours organized and sold by such agents or operators. As to split

[26] The only two U. S. "on-route" origination points are New York and Boston.

charters they assert that the present prohibition unnecessarily discriminates in favor of the larger chartering organization to the detriment of the smaller organization which cannot generate sufficient participants from its membership to fill a modern-day aircraft. Authorization of split charters, according to the applicant, would thus expand the charter market by bringing charter service to smaller affinity groups. The same would also be true, they

19475

allege, with reference to all-expense group tours for which there is a great demand.

THE INTERVENORS

Pan American and TWA. These intervenors are competitors of the applicants for transatlantic passenger charter business. They are also the competitors of 17 other carriers which operate transatlantic passenger services under the flags of foreign countries. Each of them holds a certificate for a North Atlantic route which links the United States with Europe and points beyond. Together they serve all of the countries involved herein, and as part of their certificated authority they have the inherent right to engage in on-route charters and the statutory right to operate off-route charters, subject to regulations prescribed by the Board.

These intervenors strongly oppose the issuance of certificates for transatlantic charter authority. They take the position that there is no need for such authority as the transatlantic passenger market is already saturated with competition that offers a wide variety of service including economy, charter, and the newly instituted group fare.

They point out that the route is intensely seasonal with directional markets that are not complementary to each other. These considerations, it is inferred, per se warrant the denial of the proposals under consideration.

However, aside from these considerations, it is argued that the recent establishment of the group fare has obviated any necessity for certificated charter carriers. It is asserted that under such group fares every passenger that

is now eligible to move on a charter can be handled on a scheduled service that is not only superior but about as inexpensive. Despite the fact that the group fare is not available for weekend travel and may not offer single-plane service, Pan American and TWA do not consider these to be handicaps which will noticeably affect the group fare market.

Other reasons advanced by Pan American and TWA for denying the applications in this proceeding are: (a) the certification of charter carriers would have an adverse effect on the foreign relations of the United States because inherent in such certification is the matter of reciprocity which would flood the market with a second tier of carriers and destroy the enforceability of the charter regulations; (b) charter services as proposed are not economically feasible as demonstrated by the past history of the Part 295 operations; and (c) the certification of the charter carriers would adversely affect operations of Pan American and TWA since they would divert from the group fare passengers.

Pan American and TWA contend that there is no need for split charter authority or for all-expense group tour

authority. They note that split charter authority would permit applicants to transport the same groups that are entitled to use group fares, and they contend that applicants have not established a need for this additional authority in view of the group fares. As to all-expense group tours it is claimed that the proposed definition would permit travel agents to publicly solicit members of the general public for charters, thus exposing to diversion every passenger now moving on the scheduled services.

19477

ASTA is a trade association incorporated under the laws of New York with a membership of approximately 1,450 travel agents and tour operators representing over 2,000 travel agency locations in the United States and Canada. In addition, ASTA has approximately 500 nonresident active members located in Europe, Asia, and Africa. ASTA's interest in this proceeding, as may have been noted, concerns the future role of the travel agent under Part 295.

In support of its proposal to remove the restrictions on travel agents ASTA reasons that such restrictions have an insignificant tendency to confine pro-rata charters to bona fide club members or otherwise to reduce diversion. Therefore, the restrictions, it is claimed limit the legitimate business freedom of the agent and is arbitrary if not possibly unconstitutional.

As to the charter of aircraft for all-expense group tours, ASTA contends that the proposal would make transatlantic pleasure tours available to a large segment of the American and European public which cannot otherwise afford such tours, and that it would enable the small travel agents to organize less than planeload charters and to offer low cost travel to every individual irrespective of whether such

individual belongs to a charterworthy group. Because the proposal will develop an alleged new market, ASTA argues that it will not divert substantially from the scheduled carriers.

19478

THE BUREAU OF ECONOMIC REGULATION

The Bureau takes the position that three supplemental air carriers should be certificated to provide transatlantic charter service for a period of five years. This position,[27] the Bureau emphasizes, is predicated on the assumption that Congress will enact legislation which will empower the Board to continue as a class the supplemental air carriers.[28] In the absence of such legislation, the Bureau indicates that it would not make any such recommendation for the supplementals in view of the seasonal nature of the charter operations which without the support of year-round operations, the Bureau contends, could not be economically justified.

It is pointed out that the transatlantic charter market has grown significantly since 1955 primarily as a result of the substantial difference between the cost of air transportation on a pro rata charter basis and the cost as determined by the applicable fare on a scheduled basis. So long as this difference prevails the Bureau argues that

---

[27] The first five years would be a test period, according to the Bureau, at the conclusion of which these carriers which had not performed an average of at least 50 round trip charters for the previous three years would be subject to revocation.

[28] Public Law 87-528 described in footnote 9 authorizes the Board to certificate supplemental air carriers to engage in charter operations. Whether this meets the Bureau's assumptions can only be answered by them.

there will be a substantial demand for charter services. While the difference has been narrowed considerably by the group fare the Bureau does not feel that the latter has eliminated the demand for charters.[29]

19479

Although the Bureau recognizes that group fares should reach a larger segment of the public than planeload charters, it contends that the great mass of the public will still be deprived of an inexpensive means of travel unless a limited number of Part 295 carriers are certificated with additional authority to carry charter groups by travel agents where such groups are on an all-expense paid tour. The Bureau opposes any split-charter authority on the basis that such authority cannot be justified simply to offset the competitive advantages gained by scheduled carriers through the group fare. According to the Bureau, group fares should adequately meet the needs of small groups.

19480

THE TRANSATLANTIC CHARTER MARKET

Characteristics and Growth. The traffic that moved via the charter services in issue here is part of the over-all transatlantic passenger market which historically has experienced directional imbalance, sharp seasonal fluctuations and intense competition. Every year since 1950 a majority of the passengers in this market have been U. S. citizens. At times U. S. travelers have accounted for as much as 71 percent of the total movement but most recent

[29] Like the applicants, the Bureau notes that the group fare service is not available for weekend periods or to off-route points.

statistics indicate that U. S. citizens make up about 63 percent.

Direction-wise, travel is heavier westbound. In 1961 the average load factor of the IATA carriers was 52.2 percent on westbound flights and 48.8 percent on eastbound trips. The westbound movement appears to reach its peak in August, September, and October and drops to its lowest point in April, May, and June. The eastbound movement, on the other hand, is the heaviest during the five months period March thru July, reaching its peak in June and July.

The total transatlantic passenger business is shared by 19 scheduled air carriers, which are also authorized to perform charter services, and the Part 295 operators. Sixteen of the 19 scheduled carriers are IATA members and two of these are the intervenors, Pan American and TWA. In addition to these there are prospects that others will enter the market. There are outstanding bilateral agreements with 17 foreign nations which permit the establishment of additional services. Already three foreign airlines have announced plans to activate service.

19481

The unrelenting growth of foreign flag competition in recent years has been accompanied by a corresponding decline in Pan American's and TWA's share of the market. In 1955 and 1956 these U. S. carriers accounted for 61 percent of U. S.-Europe passengers and 88 percent of the U. S.-Asia traffic, all of which moved via the North Atlantic. In 1961 they handled only 41 percent of the U. S.-Europe market and 65 percent of the U. S.-Asia passengers.

The pro rata charter market, which constitutes the bulk of the charters in issue here, is extremely sensitive to low

(19481, 19482)

cost transportation and is affected with the same problems that beset the entire transatlantic passenger business. This market is dependent on the pro rata fare being substantially lower than the most inexpensive scheduled fare, and it is even more seasonal and directional. It is composed almost entirely of U. S. pleasure and vacation travel and thus experiences greater seasonality and directional imbalance than the overall transatlantic market. This charter business is most active during the six-month period April thru September, peaking in June, July, and August. In 1961 about 83 percent of the transatlantic charters (pro rata and single-entity charters exclusive of MATS) were pro rata charters flown during the period April thru September and a large percentage of these were operated in mid-summer.

Between 1957 and 1961 the total number of transatlantic charter passengers on pro rata and single-entity flights increased nearly 200 percent. The largest increase was experienced in the pro rata charters which, as noted in the

19482

table below, jumped from 38,733 passengers to 168,694 passengers, an increase of over 300 percent:

Year	Total Charter Passengers	April-September Pro Rata Passengers
1957	70,654	38,733
1958	92,057	50,447
1959	108,318	63,781
1960	164,255	129,552
1961	203,959	168,694

Future Potential: The applicants have varying opinions as to the size of the future transatlantic charter market.

Capitol estimates the 1963 potential at 224,000 passengers, whereas, Riddle forecasts the 1963 market at 575,000 passengers. Within this wide range are the 1963 predictions by Seaboard of 275,000 passengers, 330,000 by ONA, Saturn, World, and Modern, and 384,000 by Flying Tiger.[30] Each of these estimates has as its foundation the historical growth trend of the transatlantic market.

Under the conditions which fostered the development of the present transatlantic charter market, the 1963 pro rata and single-entity passenger potential should be substantially larger than the 1961 volume of 203,000 passengers. A simple projection of the historical trend, using a 20 percent annual growth rate which is somewhat less than the experienced annual average growth rate, would place the 1963 potential at approximately 290,000 passengers. However, such a potential would necessarily ignore the recent inauguration of the group fare program by the IATA carriers.

19483

It is generally accepted that the greatest single influence in the development of the transatlantic charter market has been the low individual pro rata cost of a charter flight. The substantial difference between this cost and the cost under the comparable economy fare has created the demand for group travel via charter air transportation. Since 1960 the New York-London round trip economy fare on a jet flight has been $486 and on a piston-engine flight $450.

[30] Flying Tiger's traffic witness estimated that the market could total 400,000 passengers if split-charters and all-expense tour charters are authorized.

The average cost for this round trip on a pro rata charter flight has been in the area of $250, not including administrative and other expenses, which, if added, would bring the average to about $275. The differential, therefore, depending on equipment used, has ranged from $175 to $211 if all expenses of the charter are pro-rated and $200 to $236 if only the air transportation portion of the charter is considered.

Under the IATA group fare program which was approved by the Board on April 16, 1962, this differential is now $3 to $25, if all charter expenses are included, or from $28 to $50 if just the air transportation part of the charter is counted.

The group fare program is experimental and is scheduled to expire on March 31, 1963, unless further extended by the IATA and approved by the Board. It is applicable to "affinity" and "spontaneous" groups and offers these groups a 38 percent discount on economy-class round-trips. It does not permit travel between 7 a.m. on Friday and 7 a.m. on Monday eastbound during May, June, and July and westbound during August, September, and October; and it is available only for transportation between on-line points which so far as the United States is concerned includes New York and Boston.

19484

Most of the applicants readily concede that this reduced fare plan will have some adverse effect on the pro rata charter market. Prior to the Board's decision on the IATA Group Fares[31] some of the applicants predicted dire results

[31] Order E-18224, *supra*, page 10.

for the charter market,[32] and at the hearing in this case they continued to recognize that these promotional fares would divert traffic from the charter field. Witnesses for two of the applicants, agreed that, absent comparable authority by the Part 295 carriers, their forecast for 1963 would have to be revised downward by 50 percent to account for the impact of the group fare. The intervenors, Pan American and TWA, concluded that the group fare program will substantially supplant transatlantic charter travel and Pan American estimated that this program would divert 75 percent of the Part 295 carriers' charters and 65 percent of its own charters and those flown by TWA.

Since group fares are designed to tap the same traffic source that feeds the charter business, it is apparent, as the Board has previously observed,[33] that there will be a decline in the volume of charter travel. Following the announcement of the group fares plan in early 1962, a number of previously arranged charters were cancelled. Flying Tiger lost 23 or 24 charters, Pan American 27, and Seaboard 10.

19485

The full effect of group fares on charter travel has not been experienced since the group fares were not approved

---

[32] Modern, ONA, Saturn, and World in a joint memorandum, filed in Docket 13479 concluded: "The prospect is that the new group fare discount will effectively replace or supersede the transatlantic market as we know it today." In the same docket, at oral argument, counsel for Riddle spoke about the "drying up" and "elimination of Part 295 business" as a result of the group fare; and Seaboard, at the same time, was of the opinion: " . . . that this group rate will place in jeopardy the passenger charter business in the North Atlantic."

[33] Order E-18224, *supra*, page 13.

until well after a large percentage of the 1962 charters had been arranged. The 1963 charters will be negotiated this fall and winter in the face of the existence of group fares, and next year should give a fairly accurate picture of the future potential for charter services.

Meanwhile, it is pertinent to note, as the applicants insist, that the group fare program is not superior in all respects to charter services. There are several infirmities in the program which should lessen its impact upon the charter market.

First, as noted above, it is not available for weekend travel. While this is not a serious handicap since the experience of the applicants indicate that 75 percent of their charter traffic moves during the week days, there are some groups which must begin their tours on the weekend in order to take full advantage of their vacation leave. Industrial groups generally fall into this category. Although Pan American suggests that industrial groups are willing to adjust vacation schedules so as to allow their employees to take advantage of group fares, the testimony of the president of two travel agencies in New York City shows that there are industrial plants which release thousands of employees for vacations, beginning on week-ends, and these plants account for many transatlantic charters.

Secondly, since group fares do not apply to off-route points, group travel to and from off-route points cannot be handled by single-plane services. During the period 1959-61 Capitol operated 139 charters of which 63 originated at cities in the U. S. which would be off-line to

the group fares; and in 1961 nearly one-third of the charters flown by Flying Tiger were between points which would not be covered by the group fares. While only 12 percent of Pan American's charter flights during the period January-August 1961 were off-line to that carrier, Pan American rejected 444 charters during substantially the same period, and it could not say how many of the latter were off-line and how many were refused for that reason.

Finally, group fares are not sufficiently low to reach any large volume of European group travel. This group movement is proposed to be served by the applicants through the inauguration of low directional fares.[34] Flying Tiger initiated such a program in 1961 with fares ranging from $120-$150 for a round trip. It was successful in attracting a number of European-originated charters, mostly university students. Approximately 90 of Riddle's 1962 charters are European-originated and it was estimated by Riddle's International Sales Director, whose experience in the travel business covered 15 years and who served as European sales manager for Greyhound Bus, that Riddle could double its volume of European traffic in 1963. He testified that, in addition to England and Scandinavia, a great potential market exists in other countries such as Germany, Holland, and Switzerland. Another witness, who headed travel agencies specializing in group tours and transportation of large group movements, testified that there is a latent European demand for travel to the United

[34] Whether such fares will violate Section 404(b) of the Act is not in issue here.

19487

States which is impeded by the cost of transatlantic transportation. He felt that the group fares would meet only part of this demand. In his opinion the low directional fares proposed by the supplemental carriers "will do more than any other thing else to promote European travel to the United States."

These impediments in the group fare program should soften its impact upon the charter market. In addition, while the group fares are competitive price-wise with the pro rata cost of charter services, the fact remains that there still exists a sufficient differential to attract some individuals and groups such as families on limited budgets, industrial works, and university students. Under the proposals of Seaboard and Riddle, which would involve the use of prop jet or pure jet equipment seating 165 to 186 passengers, the differential would be much greater.[35] However, unless split charters are authorized, it is unlikely that this type of equipment would be widely employed in charter services since the number of groups in excess of 100 passengers per group would appear to be limited.

Also lessening the impact of the group fare program on the charter market is the probability that the IATA carriers, including Pan American and TWA, will not be able to accommodate all group travel during the peak months of the vacation season. A travel agent testified that, at the

19488

time of the hearing in 1962, it was difficult to secure group space eastbound between June 15 and July 25 and west-

[35] For a New York to Paris flight they show a differential of $100-$114.

bound between August 15 and September 15. As of May 10, 1962, TWA was unable to accommodate 86 groups seeking reservations. A majority of these groups requested space on specific flights during the last two weeks in June and the first week in July. However, only ten were offered alternative dates within one to three days of the date on which they sought reservations. While Pan American had been able to accommodate all groups for the period May 1 through July 15, 1962,[36] it acknowledged that there may be times in the future when some groups cannot be carried. In all probability the 1963 transatlantic pro rata and single-entity charter market will be somewhat less than the 1961 volume of 203,000 passengers unless the concept of charter service is broadened to include charters by travel agents for all-expense group tours or unless the applicants are granted split-charter authority to compete with the group fare program. Either of the modifications to the present Part 295 regulations would expand the charter potential. The former would more than balance the impact of the group fares.

Historical Participation. The table below shows the number of one-way charter passengers generated by the Part 295 carriers on pro rata and single-entity charter flights during the five-year period 1957 thru 1961. It also

19489

shows the percentage which this traffic bears (a) to the total charter market and (b) to the total transatlantic market:

[36] It had booked only 38.3 percent of its economy-class seats during this period.

(19489)

Year	Passengers	Share of Total Charter Market	Share of Total Transat. Market
1957	31,063	44%	3.0%
1958	33,650	37	2.6
1959	32,855	30	2.2
1960	28,728	17	1.5
1961	49,125	24	2.3

In producing the above traffic the Part 295 carriers averaged 377 one-way charter flights per year with a low of 291 flights in 1960 and a high of 487 in 1961. The combined services of Pan American and TWA, on the other hand, provided an average of 411 one-way flights per year with a low of 334 flights in 1957 and a high of 474 in 1960. Yet, Pan American and TWA failed to generate as many passengers as the Part 295 carriers in four out of the five years and their combined yearly average volume was 2,689 passengers less than the Part 295 carriers.

The penetration of the foreign flag carriers increased each year. In 1957, operating 264 flights, they generated only 16,358 passengers which represented 23 percent of the market. By 1960, flying 1,223 one-way charters, the foreign flag carriers had captured 58 percent of the market, and they held substantially the same advantage in 1961. In the five-year period they had increased their share of the market by 34 percent. In the same period the share of the Part 295 carriers declined 20 percent and that of Pan American and TWA 14 percent.

The decline in the U. S. carriers' share of the market cannot be attributed entirely to the increased efforts of

19490

the foreign flag carriers. As pointed out earlier the charter market is intensely seasonal and carriers do not always have equipment available to meet the demand by charter groups. As a witness for Pan American explained "the demand period is sharply peaked," and ". . . you may have as much as 15 requests for the same day and the charterer refuses to accept an alternate day." Seventy-nine percent of the transatlantic charters refused by Pan American during 1951 were to have been flown in the April-September period and 72.4 percent in the June-September period.

In 1961 Pan American refused 375 round trip and 54 one-way charters because of the lack of equipment. At the time of hearing, Pan American had turned down 60 DC-7C requests and 48 jet requests for charters in 1962. At the same time it also had 277 jet charters and 618 piston charters waitlisted. Since Pan American's experience in 1961 shows that less than five percent of its waitlisted charters were flown, it is probable that as many as 587 piston and 263 of the jet waitlisted charters will be refused in 1962, making a 1962 total of 958 charters which Pan American cannot fulfill.

Operating Experience of Part 295 Carriers. Since 1957 there have been 16 Part 295 carriers engaged in transatlantic operations. Of this number only two, viz, Flying Tiger and ONA have continuously provided charters up to the present time. Yet, these carriers, as is noted from

19491

the table below, which show one-way pro rata and single-entity charters, have not offered a consistent level of service over the entire span:

(19491, 19492)

	1957	1958	1959	1960	1961	Estimated 1962[37]
Flying Tiger	154	102	14	28	134	134
ONA	34	45	140	10	3	8

The relatively small number of charters operated by Flying Tiger in 1959 and 1960 resulted from that carrier's determination not to stress charters "due to the rate situation" and to the "competition from foreign carriers." The inconsequential number of charters operated by ONA from 1960 is attributed to its MATS commitments while the small number in 1961 and 1962 is attributed to the low rates and the competitive situation.

Seaboard operated continuously from 1957 thru 1961 and it alleges that it is considering the operation of some commercial charters in 1962 with its CL-44 aircraft. It had contracts for performance of 120 one-way Constellation charters in 1962 but pursuant to its program to phase out this equipment, Seaboard leased its Constellations to Capitol on an option to buy basis and then transferred the charter contracts to Capitol. USOA operated continuously from 1957 to 1961 but dropped from the market in 1962 because of the downward trend of the prices of charters.

19492

The extent to which Seaboard and USOA participated in the transatlantic charter market is shown below:

	1957	1958	1959	1960	1961
Seaboard	17	7	27	21	15
USOA	9	18	2	10	6

[37] Based on signed contracts and contracts with deposits.

Capitol did not operate any charters in 1957 and only eight in 1958. However, in 1959 it performed 71 one-way charters and increased these thereafter. Riddle did not enter the transatlantic passenger charter market until 1960 and then only on a modest basis for the first two years. Its record along with Capitol's is shown below:

	1958	1959	1960	1961	Estimated 1962
Capitol	8	71	101	87	81
Riddle	—	—	18	27	226

Cal-Hawaiian participated in the charter market for three years, operating two charters in 1959, thirty-five in 1960 and thirteen in 1961. It has no charter program proposed for 1962. Saturn initiated transatlantic charter service in 1961 operating 17 in that year. Its plan for 1962 calls for 41 charters. The remaining five applicants did not engage in any transatlantic charters during the period 1957 to 1961 and they have no plans for performing such charters in 1962.

Thus, of the 13 applicants in this proceeding only 8 have been active at one time or another in the transatlantic charter field, and not any of these or the other Part 295 carriers have provided a consistent level of service over a substantial period of time. From 1957 to-date four

different carriers have shared the top rank in generating transatlantic charters. Flying Tiger led the field in 1957 and 1961, ONA in 1958 and 1959, Capitol in 1960, and Riddle, on the basis of signed contracts and deposits, in 1962. Over the entire 6-year period Flying Tiger has operated the greatest number of charter flights and hence,

from this standpoint, is the most experienced of all the Part 295 carriers. Not too far behind, however, are ONA and Capitol, and Riddle's 1962 intensified efforts place it among the four leading transatlantic charter operators.

The financial results of applicants' transatlantic charter operations have been almost as irregular as their participation. ONA's calculations show that its charter operations for the five-year period 1957 through 1961 have resulted in an operating loss of approximately $175,000. In this period ONA experienced two profitable years, and in neither of these years was its profits substantial.

Flying Tiger calculated that it had operating profits in four out of the five years between 1957 and 1961, and that its total net operating profit over the entire period amounted to approximately $1.2 million. However, its calculations would seem to overassess its charter earnings in view of ONA's experience, and the financial results of other carriers in the field. This is also suggested from Flying Tiger's computations for 1957 and 1960 in which it shows operating profits of $637,000 and $91,000, respectively, for its transatlantic charters, whereas all of its other services, including CAMS, incurred an operating

19494

deficit in those years. For example, in 1957 Flying Tiger's operations, other than transatlantic charters, developed roughly 12 times the revenue generated by such charters but sustained a loss of $245,000; and in 1960 all of its other operations produced 44 times the revenue yielded from transatlantic charters but suffered a loss of $1,217,000.[38]

[38] In 1958 transatlantic charters accounted for 10 percent of Flying Tiger's total company profits and for nearly 20 percent in 1961.

Over the five-year period profits from Flying Tiger's transatlantic charters represented 29 percent of the total company profit for the period.

While Flying Tiger may have actually experienced the favorable results produced by its allocations and computations, its action in substantially reducing transatlantic charter services in 1959 and 1960[39] and its proposal to limit the amount of equipment to be used in this market in the event of certification herein, does not suggest it. It is more likely that Flying Tiger's allocation of revenues and expenses created an abnormal financial picture similar to the one developed by Capitol whose allocation is shown in the table below:

Year	Total Company Operation Net Operating Profit	Transatlantic Charter Operations
1958	($117,404)	$21,530
1959	($203,653)	95,363
1960	131,067	373,961
1961	285,980	280,294

19495

Under close scrutiny Capitol conceded that this allocation did not correctly reflect the amount of profit applicable to the total company operations, on the one hand, and transatlantic charter operations, on the other. Upon request it recalculated its 1961 charter operations on the basis of a more realistic allocation and arrived at a profit of $112,683, instead of $280,294. But even this calculation appears to

[39] While Flying Tiger relates this curtailment in service to low rates and competition, it substantially increased its service in 1961 when the competition and rate situation was no different than in 1959 and 1960.

overstate the amount of profit since it does not take into account certain higher overseas costs and does not make necessary adjustments for the differences in equipment used by Capitol.

Although Riddle operated transatlantic charters in 1960 and 1961 it segregated its transatlantic charter operations from its total operations only for the 1961 season. This allocation discloses that Riddle's transatlantic charters resulted in a loss of $27,905.

Seaboard, on an added cost basis, experienced an operating profit of about $8,000 over a five-year period without considering ferry mileage. In four of the five years Seaboard shows that it had minor profits. Other estimates include a $105,000 five-year operating profit by USOA, a three-year profit of $20,000 by Cal-Hawaiian[40] and a $6,329 loss by Saturn for the 1961 season.

19496

SPLIT CHARTERS

Although applicants differ in some minor respects as to split-charter authority, generally speaking they would have it embrace the transportation of several different groups, either "affinity" or "spontaneous", on a chartered aircraft so long as each group numbers not less than 25 passengers. This authority is sought primarily as a competitive device to recapture the traffic lost to the IATA carriers by virtue of the group fare program.

According to a traffic expert representing four of the applicants, split-charter authority would enable the Part

[40] In 1959 Cal-Hawaiian operated one round trip charter. According to the carrier's estimate this accounted for 26 percent of the company's total profit.

295 carriers to attract traffic equal to that which would be taken away from them by the IATA group fares. Another witness, the director of finance of World, was of the opinion that such authority is essential if the Part 295 carriers are to maintain a competitive position in the transatlantic charter market and utilize large jet equipment. Seaboard's senior vice-president held a similar view, maintaining that any carrier selected to provide transatlantic charter service must have authority to carry less than planeload groups. Other witnesses were of the same opinion, and their testimony was to the effect that, with the advent of modern aircraft carrying from 118 to 165 passengers, the market for planeload charters is limited and unless split charters are authorized the small charterer will be unfairly prejudiced.

While small "affinity" or "spontaneous" groups which are unable to generate sufficient traffic for planeload charters may be handled by the scheduled carriers under

the group fares they will still lack the advantage of the slightly lower cost of charter service which is available to large groups. Witnesses pointed out that students of small colleges cannot avail themselves of the smaller cost advantage of charter service which is available to students of large colleges that find no problem in generating planeload charters. This is also true, they said, of employees of small organizations and members of small national-origin groups. It was suggested that split-charter authority would enable such students, employees and members to take advantage of the cheapest form of air transportation that is now available, and that such authority, coupled with

directional fares as proposed by the applicants, would also facilitate the development of European-originated group air travel.

Pan American claims that split charters will be unworkable. According to Pan American, in order for split charters to operate successfully, either all groups on a flight must originate and terminate at the same destination and return at the same time, or else the carrier or one of the groups must bear the expense of the ferry mileage involved in the multiple origins or destinations. Even if the groups on a flight are matched for origin and destination, Pan American suggests that such groups must be of exactly complementary size or some seats must go empty, thereby increasing the pro rata cost of the trip to all passengers.

The applicants, however, do not agree with Pan American. Their witnesses point out that, tariff-wise, a group

of 25 persons or more can pay its proportional share of the planeload charter price,[41] and the carrier can coordinate its split charter reservations so as to produce flights to one destination or to two closely located destinations such as London or Paris. Under these conditions there would be little, if any, ferry mileage involved. In the case of Flying Tiger that carrier proposes publishing a point-to-point rate as it has published in the past with built-in ferry mileage, so that there would be no apportionment of ferry mileage between groups.

---

[41] For a 118-seat Super Constellation the price for a group of 25 persons would be 25/118ths of the total aircraft cost.

In making reservations for split-groups the applicants do not expect to encounter any particular difficulties. Flying Tiger likens this problem to the one of tying in outbound flights with inbound flights with which it was very successful in 1961 as indicated by its low volume of ferry mileage. However, aside from Seaboard, other carriers have not been so successful. As subsequently pointed out, in some instances ferry mileage has reached as high as 100 percent of the live mileage.

19499

Group Tour Charters

The testimony of travel agents appearing on behalf of some of the applicants or ASTA indicates that a program designed to enable travel agents to charter aircraft for transportation of all-expense paid tours would tap a new low-income travel market which has not been reached by the scheduled services of the IATA carriers. The testimony also establishes that, while agents will generally welcome this opportunity to exploit a low-income travel market, there may be some agents who will be unwilling to run the risk of chartering aircraft.

For a number of years the Air Ministry in Great Britain has issued licenses to operators to conduct so-called "inclusive tours." These tours have included the price of the air transportation, hotel accommodations, sightseeing, etc., and in all major respects they are comparable to the all-expense group tours which are in issue here.

Under the British practice each "inclusive tour" must be approved by the Air Ministry. After an application to operate such a tour is received, notice is given so that the

(19499, 19500)

regular route carriers may oppose the tour charter on the grounds that it would be diversionary. In order to guarantee that such services do not materially divert traffic, licenses are subject to the condition "that the price of the tour shall be a price not less than the public return scheduled fare." This condition is recognized by the IATA carriers as a prerequisite to those carriers participating in inclusive tours on a charter basis in the European area.

19500

IATA Resolution 045, paragraph 8 provides:

> "* * * the price paid by the passenger for inclusive tours performed on a charter basis shall not be less than the lowest, applicable fare for the type of service used available to the public on the same route * * * ."

Since 1955 the British inclusive tours have shown a remarkable growth as indicated in the table below:

Year Ending in March	Passengers
1956	45,995
1957	92,081
1958	137,416
1959	180,014
1960	166,671
1961	198,689

Not one of the applicants or intervenors has made any specific forecast of the number of passengers that would move on all-expense tour charters. Capitol, conceding that "no reasonable basis could be found for calculating the

results statistically" arbitrarily decided that the historic volume of transatlantic charter traffic should increase conservatively by 10 percent under such new authority; while a traffic expert appearing for ONA, Saturn, World and Modern indirectly set the figure at 30,000 passengers.[42] Using the latter figure and assuming the historic British pattern ASTA on brief computed a 1968 market at 129,600 passengers.

While, as Capitol concludes, there is no reasonable basis upon which an accurate appraisal can be made, it is virtu-

19501

ally certain that there is a large potential for all-expense tour charters. Almost 13 percent of Pan American's economy fare passengers are members of all-expense tours, and there is no reason why the experience of the other IATA carriers should have been substantially different.[43] In 1960 there were 1,454,506 transatlantic economy fare passengers who used the services of the IATA carriers, and the number in 1961 was probably in excess of 1.6 million. If 13 percent of these passengers were members of all-expense tours then the 1961 transatlantic all-expense tour market exceeded 200,000 passengers.

A significant part of this market could be attracted to all-expense tour charters since the pro rata cost for such charters will be substantially less than the present economy

[42] This witness estimated that the Part 295 carriers would handle 50,000-70,000 passengers under liberalized operating conditions and 80,000-100,000 if, in addition, all-expense group fare authority were authorized.

[43] Fifteen percent of TWA's transatlantic revenues are attributable to all-expense tours.

(19501, 19502)

fares. In addition, as pointed out by witnesses, a new low-income stratum of traffic, untouched by the economy fares, should be stimulated thus swelling the total charter potential, including planeload charters, well beyond the 1961 experience.

19502

DIVERSION

Pan American concedes that, before the adoption of the group fare program by the IATA carriers, the charter services of the Part 295 carriers were essentially non-diversionary since such services attracted traffic that would not otherwise have traveled by air except for the low charter cost and since Pan American and TWA were unable to meet the demand for such charters with their own equipment. Now that the group fares are available Pan American contends that every passenger that will move by a Part 295 charter in the future will represent a passenger diverted from the IATA scheduled carriers. This contention is based on the premise that every passenger entitled to travel on a Part 295 charter can now move on the scheduled services of the IATA carriers at comparable fares.

As noted earlier, there are infirmities in the group fare program which render it unsuitable for the complete exploitation of "affinity" group travel. Group fares will not reach the bulk of European-originated group travel and there will be periods during the summer vacation season when they will not meet all demands for U. S.-originated group travel; nor is it likely that group fares will attract groups that cannot be reduced below a plane-

load number.[44] In these circumstances, as pointed out previously, there will continue to be a demand for transatlantic charters, albeit on a reduced scale, which cannot be met by the group fare program.

19503

This being so the charter services should continue to be as non-diversionary as they were before the advent of group fares. As to traffic that can be feasibly handled under the group fare program it is hardly possible that it will be reattracted to charters. There is considerable evidence to the effect that, fares being substantially the same, passengers will invariably prefer the scheduled carriers over charter services of the supplementals.

The possibility of diversion becomes more apparent where split charters are concerned. This authority is sought to neutralize the impact of group fares on the charter market, and under it the Part 295 carriers would obviously recapture some of their former business as well as part of the newly generated group fare business. The group fare program is expected to stimulate a substantial amount of new traffic from smaller organizations which have been unable to develop planeload movements.

Initially, split charters are not likely to attract many groups that can be accommodated under the group fares. This is due to the fact that DC-6's, DC-7's or Constellations would be used by the charter carriers, and the fare differential between this equipment and the jets of IATA carriers would be relatively small. However, this situa-

[44] Pan American and TWA's group fare reservations for 1962 indicate that the average size groups under this program will be less than 35 passengers per group.

tion would not prevail after some of the applicants inaugurate jet or jet-prop charters as they have planned. These services, as mentioned earlier, would be provided at substantial fare reductions over the group fares. Because of their size these aircraft are ideal for split charters, and

19504

with such a fare differential, it is apparent that these would attract some of the group fare business. The volume that could be attracted might be substantial if considerable service is provided.

A more serious diversionary threat is posed by the all-expense tour charters. Pan American and TWA depend heavily on the sale of air transportation by travel agents. Of Pan American's group fare sales 80 percent have been made by agents, and more than 60 percent of its regular air transportation business has been sold by travel agents. The extent to which such agents will continue to be a powerful sales force for Pan American and TWA may be affected if they are authorized to openly solicit individual members of the public for low cost all-expense tours on chartered aircraft. ASTA seems to feel that the price provision, viz, not less than the lowest prevailing IATA fares, plus prepayment and refund requirements as well as unit travel should protect Pan American and TWA from any serious diversion. Only the all-expense group tourist of Pan American and TWA, according to ASTA, would be exposed to diversion.

As mentioned earlier 13 percent of Pan American's economy fare passengers are travelers on all-expense tours sold by travel agents and 15 percent of TWA's transatlantic revenue is derived from the same source. Less than

one-half of Pan American's all-expense tourists travel in groups and ASTA figures that not more than one-third of these, if any, should shift to all-expense tour charters. On this basis it calculates that Pan American would lose

19505

over 2,000 passengers based on its 1960 experience. This would amount to only 0.6 percent of Pan American's scheduled passengers for that year.

Since the group fare program is applicable only to affinity and spontaneous group travel, agents cannot use this program in the same manner as all-expense charters. They cannot solicit members of the public for group fares. Hence, the fare differential between an all-expense tour via the scheduled services of the IATA carriers and such a tour via a Part 295 charter will not be based on group fares but on the more expensive economy fare. This differential, as previously pointed out, averages about $200 for a New York-London round trip. When these savings can be passed on to potential tourists it will be a substantial inducement to utilize a charter flight rather than the more expensive regular service of an IATA carrier. Not only should it attract the group tourist but also the independent tourist who prefers economy to independence.

In 1960 Pan American carried approximately 218,000 economy fare passengers and the number was probably much larger in 1961. Considering that 13 percent of these passengers were on all-expense tours, the number that would be exposed to diversion (and this includes the independent tourist) today would probably be in excess of 30,000 passengers. Similarly, the revenue which TWA derived from passengers using all-expense tours over its

transatlantic routes would be subject to diversion. This amounted to $12½ million in 1961. The amount of actual diversion from Pan American and TWA would depend on the number of travel agents that would be willing to run the risk of chartering aircraft and whether split charters would be available. Without the latter the actual

19506

diversion would be somewhat less.

In 1961 Pan American had an operating profit of $2,432,000 from the Atlantic sector of its system. Its investment in this sector amounted to $206,267,000. Thus, its return on investment amounted to 1.2 percent. In the same period TWA lost $3,718,963 from its international division. Its average annual net loss on international services for the period 1956-1961 was $873,000. TWA has figured that for every 3,437 passengers diverted from TWA's economy-class service (one percent drop in load factor) there would be a correspondingly revenue loss amounting to $904,000.

19507

OTHER MODIFICATIONS TO PART 295

Eligibility Requirements. Under Section 295.30 any organization which has a membership in excess of 20,000 (except a college or university located in one area) is not eligible to participate in pro rata charters. Behind this limitation is the theory that large organizations cannot be distinguished from the general public which is a prohibited area for Part 295 charters. At one time the IATA carriers observed this limitation but it is not incorporated in the group fare program. There is no restriction on the

size of organizations from which eligible affinity groups can be organized.

The applicants contend that, if for no other reason than to place them in an equivalent competitive position with the IATA carriers, the size restriction should be eliminated. Some groups, such as the Lions Clubs and the British Bar Association which otherwise satisfy all affinity requirements, are prohibited from obtaining the charter services of the Part 295 carriers.

In addition to the size eligibility requirement, the regulations provide that only bona fide members of the charterer and their immediate families may participate as passengers on a charter flight. (Part 295.31.) The immediate family of a member is construed to include only the spouse, dependent children and parents living in the same household. (Part 295.32.) ONA proposes that the

19508

definition of charter organization include—

> "members of a family descended from grandparents of the members or from the grandparents of a member's spouse, whether living in the same household or not, so that such family member may participate in the charter."

The only explanation of this proposal appears in ONA's brief in which it is suggested that the amendment would be more agreeable to Europeans and boost the "Visit to USA" program. The brief cites the following testimony of an operator and owner of a travel agency in New York with reference to general group eligibility requirements:

(19508, 19509)

> "The confusion and difficulty engendered by Part 295 are particularly great in connection with European originated travel. * * * If the group eligibility requirements of Part 295 are substantially relaxed, I believe that a tremendous amount of additional travel will be developed both in the United States and in Europe."

ONA then assumes that this testimony was directed to the above proposal.

Restrictions on Travel Agents. At the present time, under Section 295.20, travel agents may not assist in the organization or assembly of a charter group. In other words, they may not contact members of a chartering organization in order to generate a planeload of passengers. Solicitation must be from within the charter organization and this is usually by an officer of such organization who is not experienced in the field of travel.

It is suggested that this is an inefficient method of arranging charters. According to ASTA, because of a travel

agent's experience with charters and regulations, he can do a much more effective and efficient job in organizing groups than can an amateur member of an organization. It is suggested that the agent would be less likely to solicit the general public because of his knowledge of Board requirements. ASTA also believes that the agent would be able to organize the charter with greater efficiency and therefore with less administrative expense.

The vice-president of a large travel agency in New York testified that "it does not make sense that the solicitation

must be done by amateurs who sometimes come to us for advice and materials to help them solicit," and a regional sales manager of Thomas Cook & Sons, commented that "if the organization is bona fide there seems to be no reason why every effort should be made to make a planeload of passengers from within the organization." According to the latter, it is not the same as soliciting from the general public and agents therefore should be able to use their usual selling techniques as long as they are directed to eligible prospects.

The travel agency industry is also opposed to the rule which prohibits travel agents from soliciting for land tours within a charter organization. Section 295.21 prohibits a travel agent from dealing with individuals for land tours unless such individuals initiate the contact and request land tour arrangements different from a chartering group as a whole. ASTA contends that the purpose of this rule is obscure unless it is to insulate the travel agent from contact with individual charter passengers. The testimony of witnesses indicates that agents do not,

19510

as a rule, encourage members of a charter group to take tours different from those arranged for the group as a whole. The agent will do better financially if they all take the same tour. According to the witness, if agents solicit charter participants to take a tour other than the main tour, the agent would be diluting his own profits. There is no comparable provision under the IATA group fare program and the Board has not seen fit to impose such a requirement.

Finally, travel agents object to the regulation (Part 295.22) which prohibits agents from receiving, directly or

indirectly, any commission or compensation for a charter flight or a land tour if they are members of the chartering organization. They point out that although an agent who is a member of a prospective charter group may have nothing to do with initial efforts to formulate a charter, he would be the logical organizer once the decision is made. Yet he is precluded from doing this unless he forfeits his commission.

In 1960 the Hartford Archdeaconary of the Episcopal Church chartered a plane through the Davis-Travel Service, Inc., of Hartford. One of the members of that archdeaconary, which included 34 parishes in that area and about 17,000 members, was a travel agent. He made the arrangements for the tour and when he applied for his fee from the IATA charter carrier he was unable to collect because at that time the IATA charters were subject to prohibition similar to Part 295.22. This same agent, as a member of a ski club, was ineligible for commission

on a charter being arranged by such club; the charter was turned over to a competitor who did not belong to the club. Another agent, a member of the Harvard Club, was unable to handle two charters by that club in 1962, and still another agent, a member of the British War Veterans, resigned from that group in order to handle their charters.

The rule is considered very offensive by travel agents. It is not included in the IATA resolution regulating group fares and the Board, as a condition of approval, has not required it.

19512

Conclusions

Utility of Transatlantic Charters. Although it is too early to appraise the impact of group fares upon transatlantic charter services, it is readily apparent that this program will diminish the utility of charter services as they are presently operated by the Part 295 operators and the IATA carriers. While group fares are temporary and will expire in 1963 unless further extended by the IATA carriers and approved by the Board, the indicated success of this program, as suggested by Pan American's and TWA's group fare reservations for 1962, makes it unlikely that it will be dropped by the IATA carriers.

The expansion of the charter concept to embrace split charters would increase public response to charter service by bringing smaller organizations which cannot afford the charter of the entire capacity of an aircraft within the charter potential. And the inclusion of authority to charter aircraft to travel agents for all-expense tours would, as noted earlier, extend charter service to a substantial new area of business whose potential is significant. In combination these proposed amendments to the present charter regulations would make possible the charter of aircraft by one or more travel agents for the movement of several all-expense tour groups. The potential transatlantic charter market, under these conditions, and including the volume currently available, could total 400,000 passengers as predicted by a traffic witness for Flying Tiger, with well over one-half of it being comprised of all-expense tour passen-

gers of which a significant part might be Europeans whose travel to this country would be in furtherance of the "Visit America" movement sponsored by the Department of Commerce.

Since this charter potential will exist by reason of cost of service rather than by reason of peculiarity of service, most of it could be handled by the IATA carriers in their scheduled operations if the fares were equal. They possess the physical capacity to handle it since most of them have completed the transition to jet fleets with the result that seats for transatlantic scheduled services have increased 87 percent since 1958, rising from 1,745,000 in that year to 3,267,000 in 1961. If the rest of the IATA carriers follow Pan American's plan to increase economy seats 27 percent in 1962, there will be available this year about four million seats of which, as suggested by the load factor data appearing on page 39, there will be a substantial number empty. In 1961, even during the heavy travel season, which was the 6-month period May through September 1961, the IATA carriers had nearly 700,000 empty seats on their economy-class services, and TWA and Pan American accounted for 227,000.

The group fare program was designed to improve the empty seat problem and insofar as "affinity" group travel is concerned that program, as determined earlier, should be effective in reducing the demand for charters. A similar program of reduced fares directed to the low income all-expense tour market could have a corresponding effect on the need for all-expense tour charters. However, in the absence of such a program, it would appear that all-expense tour charters would have a significant utility.

Economy of Charter Services. The operating experience of the Part 295 carriers performing transatlantic charter services suggests that such services may be only marginally profitable. The constant shift of the carriers in and out of this market is indicative of an instability. This is caused primarily by the intense competition of the IATA carriers with the consequent debasement of the charter rates. But, also instrumental is the sever seasonality and directionality of traffic.

The competition problem has no foreseeable remedy; it will probably be intensified by the addition of new foreign flag carriers across the North Atlantic. Nor can the seasonality element be eliminated when it is considered that the market involved consists primarily of tourists and vacationers who travel mostly during the summer months. These are inherent economic impediments with which any future certificated charter carrier must contend.

The directional imbalance problem, however, is not insoluble. On the basis of operations in 1961 Seaboard and Flying Tiger were less affected with this problem than were the other applicants. Because of Seaboard's inherent capability of phasing what otherwise would be ferry flights into its common carriage operations, the carrier's ferry mileage was only 12 percent; and Flying Tiger, which had extensive CAM operations and originated some European group charters under directional fares, operated only 11.6 percent ferry miles in its transatlantic charter services. The other applicants, not possessing these advantages, incurred ferry mileages ranging from 31 percent for Capitol to 100 percent for ONA.

The directional problem can be diminished and even possibly eliminated by operational advantages such as Seaboard's, or by matching U. S.-originated charters with European-originated charters. The latter is the plan which most applicants in this case expect to employ through the use of directional fares. This plan, however, provides a practical solution only if the directional fares are approved and the European charters fit into the flight pattern created by the U. S.-originated charters. Riddle's present practice is not to accept European-originated charters unless they match the flight originating in the United States.

Some of the applicants seem to feel that increased volume will reduce the amount of ferry mileage, but at least two witnesses for the applicants were unimpressed with this argument. They were of the opinion that there was not necessarily any correlation between volume of charters and elimination of ferry mileage.

It is perfectly evident, as the Bureau recognizes, that the economy of transatlantic charter service is geared to operations of the carriers authorized to perform such service. Unless such carriers have year-round authority on which to append transatlantic charters as supplementary service or unless they are able to combine some other complementary seasonal operation with such charters, it is unlikely that transatlantic charter service could be remunerative.

Impact of Charter Services upon Certificated Carriers. It should be fairly evident from the earlier discussion of diversion that the charter services of the Part 295 carriers in their present form should have no material impact or

adverse effect on the operations of Pan American and TWA. It is only when these services are expanded to include split charters and all-expense tour charters, thus broadening the traffic base, that the threat of diversion becomes apparent.

The right to operate split charters, unaccompanied by all-expense tour authority, would not seem to carry any unusual competitive implications at the outset since the applicants propose to use piston-engine aircraft versus the jets of the certificated carriers at only moderate fare differentials. Considering such small differentials, and the difficulties entailed in "matching" charter groups with the ensuing uncertainty of whether the charter flight might be arranged, it is unlikely that any sizeable portion of the group fare business would shift over to charter service.

Only in the event of large jet split-charters, which contemplate substantially lower pro rata costs, should there be any appreciable drain on the group fare traffic; and with this being scattered among the IATA carriers, generally the portion diverted from Pan American and TWA should not be unduly great. So far as Pan American is concerned, it could probably absorb the diversion without any noticeable effect upon its transatlantic operations. To TWA, on the other hand, whose transatlantic services have suffered substantial operating losses in three out of four years between 1958 and 1961, the diversion would be more harmful. TWA's transatlantic load factors have been substantially below Pan American's, and it stands to benefit materially from increased traffic stimulated by group fares.

The major aim of the group fare program is to improve declining passenger loads on economy-class services and thus buttress a faltering economy in transatlantic services generally. The success of this program is important to the scheduled carriers, including Pan American and TWA, whose share of the transatlantic market is declining each year. The establishment of competing services, such as split charters, can have only a retarding influence on this program and thus impede its success and the financial improvement of Pan American and TWA. The latter, with a 1961 operating deficit for international operations of over $3.7 million and a 11-year accumulated deficit of over $1 million, can ill afford this result.

Turning to all-expense tour charters, the results would be much more drastic. In spite of the restrictions recommended by ASTA and the others, including Bureau Counsel, this authority would have a far greater impact on the operations of Pan American and TWA than is envisaged by split-charter authority. Not only would such authority expose to diversion the substantial volume of historical all-expense tour business carried by Pan American and TWA but also probably some of their individually-ticketed traffic. What cannot be overlooked here is the fact that travel agents promote and sell a large part of the individually-ticketed transatlantic business. This business, especially the vacation or pleasure travel segment of it, has no immunity from using all-expense group tours, particularly if such tours are at bargain rates. It is logical that travel agents, offering all-expense group tours on flights that they have committed themselves to charter, are going

to channel every prospect possible to their charters in order to preserve their investments in organization and promotion. Furthermore, in arranging and promoting their own all-expense tour charters, travel agents are unlikely to be as effective in selling scheduled air transportation as agents whose efforts are devoted exclusively to this business. Under these conditions Pan American and TWA could expect less traffic sales from those travel agents that go into the all-expense tour charter market.

Are Transatlantic Charters required by the Public Convenience and Necessity? The foregoing discussion dealing with the utility and economy of charter services and their impact on the existing operations of the certificated passenger carriers brings the conclusions here to the question ultimately at issue in this case, viz., do the public convenience and necessity require one or more of the applicants to engage in transatlantic charter service, and if so, under what conditions should the service be authorized?

Before deciding this question, however, it is necessary to advert to recent amendments to the Federal Aviation Act brought about by the enactment of Public Law 87-528, *supra*. These amendments, in their totality, concern primarily charter services by supplemental and all-cargo carriers and the requirements and procedures for authorization thereof.

Amendments to Section 101 of the Act establish the definition of "supplemental air carrier" and "supplemental air transportation." The former is described as an air carrier holding a certificate of public convenience and

necessity authorizing it to engage in supplemental air transportation. The latter is defined to mean charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to Section 401(d)(3) of the Act, to supplement the scheduled service authorized by a certificate of public convenience and necessity issued pursuant to Section 401(d)(1) and (2).

An amendment to Section 401 adds the above referred to subsection (d)(3) which provides:

> "In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in the Act."

Another amendment to Section 401 creates a new subsection (n) which prescribes "additional powers and duties of

the Board with respect to supplemental air carriers." Under this subsection, it is provided, among other things, that no certificate to engage in supplemental air transportation shall be issued or remain in effect unless the applicant for such certificate complies with regulations or orders issued by the Board governing the filing and approval of policies of insurance, in the amount prescribed by the Board.

19520

With reference to all-cargo carriers an amendment to subsection 401(e) grants them off-route charter authority under regulations prescribed by the Board. This authority is contained in subsection (e) (6) which provides:

> "Any air carrier, other than a supplemental air carrier, may perform charter trips or any other special service without regard to points named in its certificate, or the type of service provided herein under regulations prescribed by the Board."[2]

In the Conference Report[45] accompanying S-1969 which was the legislation ultimately enacted into Public Law 87-528, it is explained that the above-referred to section was designed to empower the Board to authorize certificated all-cargo carriers to engage in passenger charter operations under regulations prescribed by the Board. The report further notes that these carriers have performed passenger charter services for MATS and others, and that it may be a desirable supplement to their primary role of conducting cargo operations with charter authority. The report makes clear, however, that Section 401(e)(6)

[45] Report No. 1950, 87th Cong., 2nd Sess.

is only to assist the Board in granting charter authority to the all-cargo carriers in the event that the Board finds the public interest requires it.

In addition to amending the Act, as described above, Public Law 87-528, among other things, cancels all outstanding supplemental authority, but provides that certain eligible supplemental air carriers who have performed substantial operations and whose authority has not been terminated, may file applications for supplemental cer-

19521

tificates pursuant to Section 401(3)(d) within the 30-day period. If within such 30-day period an application is filed, the applicant may then continue to operate for an additional 90 days after enactment. If within 90 days after enactment the Board issues an interim certificate, the carrier may continue its operations until the Board passes on its application under Section 401(d)(3). If, however, the Board denies a request for an interim certificate or takes no action within a 90-day period, the supplemental carrier may not continue to operate beyond such 90-day period.

Pursuant to these provisions all of the supplemental air carrier applicants herein[46] have filed applications for interim operating certificates as well as for more permanent types of certificates to be issued under Section 401 (d)(3) authorizing either foreign or domestic supplemental air transportation, or both. Thus, for a period of at least 90 days from enactment of Public Law 87-528, the applicants in this case, other than Great Lakes, may continue their supplemental operations pending action on

[46] This does not include Great Lakes since its supplemental authority, as previously noted, has been terminated.

these interim applications. Beyond that point their status as supplemental carriers is uncertain.

So far as the all-cargo carrier applicants are concerned, they are ineligible to receive supplemental certificates. The provisions of Section 401(d)(3) are inapplicable to

19522

them since such provisions specifically preclude regular-route certificated carriers from holding certificates as supplemental air carriers. However, as pointed out above, the all-cargo carriers now possess the statutory right, subject to Board regulation, to engage in off-route passenger charters; they do not need any further certificated authority to engage in transatlantic passenger charters other than that which they now hold. Their right to engage in such charters, according to the language of Section 401 (e)(b), is identical with statutory authority of other certificated carriers to engage in off-route charters. The latter are regulated by Part 207 of the Economic Regulations which is applicable to "all air carriers (other than Alaskan air carriers) who hold currently effective certificates of public convenience and necessity issued by Section 401 of the Act."

While Part 207 has not been applicable to passenger charters as a result of a Board ruling and the court's decision in *The Flying Tiger Line, Inc.* v. *CAB*,[47] it might be reasonably contended that, with the enactment of Public Law 87-528, the all-cargo carriers are automatically within its provisions. The fairer view, however, based on the Conference Report mentioned above, which indicates that the Board may withhold passenger charter authority from

[47] 204 F. 2nd 404 (1953).

(19522, 19523)

the certificated all-cargo carriers, is that Part 207 is still inapplicable to passenger charters.

Returning to the point at issue, it should be evident from the conclusions developed thus far that transatlantic charter services, as presently conceived, would continue to serve a useful public purpose, although on a somewhat diminished scale; that the services of the certificated passenger carriers will not be fully responsive to this public need; and

19523

that other carriers can meet such need without undue harm to the operations of Pan American and TWA. Under these conditions transatlantic charter services, by carriers other than the certificated passenger airlines, would be in the public interest.

As to the broader concept of charter, the answer is not so readily apparent. With split-charter authority, the utility of charter services would increase, and with all-expense tour charter authority a large new area of potential air travel could be developed. However, each of these measures would expose traffic of Pan American and TWA to diversion, and, in combination, they would have serious competitive implications.

Under normal conditions, less importance might be attached to the competitive aspects of the broader concept of charter and thus the threat of diversion to TWA and Pan American. Greater emphasis might be placed on the need for developing a large new area of air travel. However, so far as U. S.-certificated flag carriers are concerned their transatlantic services are not in a state of normalcy. Their serious traffic difficulties were noted by the Board in its order instituting the *Transatlantic Route Renewal*

Case.[48] There the Board observed the steady downward trend in U. S.-flag carrier participation in the North Atlantic route market through the years, and after pointing out the disappointing financial results of TWA's and Pan American's transatlantic operations, the Board alluded to an attached "exhaustive study" of these operations pre-

19524

pared by the staff and concluded that:

> ". . . the analysis in the study raises a question as to whether point-to-point competition between U. S.-flag carriers in the transatlantic services should be continued or further steps taken to retain a second U. S.-flag round-the-world service."

An investigation was then ordered to determine whether the routes of Pan American and TWA and Seaboard should be altered, amended, modified, suspended, terminated or renewed in accordance with the staff study.

The study in question points to the "critical competitive situation" between Pan American and TWA and states that this situation "denotes an urgency for action and suggests that Board guidance and leadership in the area would be desirable." It recommends that most major foreign points require certificated transatlantic service by one U. S.-flag carrier and that a Seaboard proposal to engage in experimental "top-off" passenger service be denied for the following reasons:

> "While we recognize the carrier's need for additional revenue while fully integrating its prop-jet fleet into

[48] Docket 13577, Order E-18301, adopted May 4, 1962.

(19524, 19525)

all-cargo service, we feel that authorization of this new service would probably undermine the entire policy suggested in our basic route proposal. Grant of Seaboard's application would result in another passenger-carrying carrier, in addition to the one-carrier services of PAA or TWA. It is suggested that such authority would probably invite additional foreign flag competition."

As clearly indicated by this study and the order which places it in issue in the *Transatlantic Route Renewal Case, supra,* as well as by the facts in this case concerning the transatlantic experience of Pan American and TWA, the time is not "propitious", as the Bureau contends on brief here, for the Board to exercise its promotional responsi-

19525

bilities under Section 1002 of the Act and authorize all-expense tours. Present circumstances are not favorable to the establishment of additional service which might tend to impede future efforts in fostering sound economic conditions in transatlantic operations. The public interest, therefore, compels the denial of proposals for an expanded concept of charter to include split charters and all-expense tour charters.

As previously determined, with charter service limited to the present concept, the 1963 transatlantic market probably should be somewhat less than the 203,000 passengers generated in 1961. On the basis of historical participation, the share of the IATA carriers would be less than 49,000 passengers. However, it is possible that, with the group fare program operating as an alternative for charter services as contended by Pan American and TWA, the

IATA carriers will place such emphasis on that program that their charter services will deteriorate. In this event the historical share of the non-IATA carriers could increase substantially, conceivably beyond 52,000 passengers indicated for 1962.

A normal traffic market of this size might be adequately served by a single carrier. But the extreme seasonality of the transatlantic charter market demands a heavy concentration of service for a short period and very little thereafter. No air carrier could sustain itself on this business alone since its personnel and facilities would be idle a large part of the time; and a single carrier operating other certificated services would find it virtually impossible to meet

19526

the required massive equipment and personnel program for several months and then to readjust to a normal operation.

The only circumstances under which a single carrier could handle the Part 295 charter business on an exclusive basis would be a situation where such a carrier would conduct an exactly complementary operation and thus possess the facilities to shift to transatlantic charters and then back to the other operation. However, this ideal situation is not one in which any of the applicants in this case finds itself. Thus, it is evident that the market for transatlantic charters cannot be adequately and economically served by a single carrier.

The Bureau recommends that three carriers be authorized[49] on the theory that a larger number of carriers would

[49] This recommendation assumes the existence of even a larger charter market than found here since it is based on the authorization of all-expense tour charters.

(19526, 19527)

spread the market too thin thus preventing the establishment of sound charter specialists that presumably are needed "to become effective competitors in a market populated by world renowned air carriers." The Bureau also fears that more than three carriers would lead to a continuance of sporadic operators.

In view of the noncompetitive nature of transatlantic charter services that would be authorized under this decision, there would be no need for strong charter competitors, as urged by the Bureau. Nor is it necessary for each carrier to obtain a substantial part of the charter potential to sustain a profitable operation. The record does not

19527

show that there is necessarily any correlation between the volume of service rendered and economic soundness. ONA operated 140 charter flights in 1959, which was the largest number operated by any Part 295 carrier during that year, and it incurred an operating deficit of $196,889. Yet, in 1960, when it flew only ten charters, it experienced a profit of $13,256.

The economy of transatlantic charter service, as pointed out previously, depends on solving the directional imbalance problem—not on traffic volume or volume of service operated. Both large and small carriers that conquer this problem should experience a profitable operation. Naturally, those carriers that perform the largest number of charters should generate the greatest profits. But by the same token, if the directional problem is not mastered, those that develop the largest operations will suffer the greatest losses.

If, for any reason directional fares as proposed by many of the applicants, should be discontinued or not inaugu-

rated, the opportunity for balanced transatlantic charter operations will be greatly diminished. The only prospect for success under these conditions will lie in integrating transatlantic charters with other operations such as military or cargo charters or scheduled common carriage so as to transform nonrevenue flights into productive services.

Only one applicant, Seaboard, operates scheduled transatlantic common carriage service. The remaining applicants must depend on military contracts or cargo charter flights[50]

19528

to provide the vehicle for converting ferry flights to productive services. However, the military contracts vary in scope and in area of operation from year to year so that not all supplementals or all cargo carriers may operate transatlantically every year. Thus, if only three carriers were authorized for transatlantic charters as recommended by the Bureau and if any of these should fail to secure an appropriate military contract for a particular year, or a contract which would make possible transatlantic flights, the volume of transatlantic charter services could be reduced materially. The authorization of a larger number of carriers would minimize this situation and guarantee a more constant level of service.

Historically, the number of Part 295 carriers providing transatlantic charter flights has run from six to ten per season with an average of eight; and the number operating ten or more charters per season has fluctuated between five and eight, with an average of six. Up to April 1962

[50] The all-cargo carriers possess statutory authority to perform off-route cargo flights.

(19528, 19529)

six Part 295 carriers had contracted to operate 610 charter flights involving 52,300 passengers. Thus, on an average of between six and eight carriers have handled the Part 295 charters up to the present time, with six carrying all but an inconsequential part of the business.

In the face of this experience there would appear to be no logical reason why six carriers could not adequately serve the future transatlantic charter market previously handled by the Part 295 carriers. This number would be consistent with the desirability of keeping transatlantic charter service within its proper role as an incidental or supplementary operation rather than as a business in and of itself calling for specialists.

19529

As to the particular carriers that should be permitted to participate in this service it must be recognized that three of the applicants are certificated to all-cargo carriers, and that all that is needed to authorize them to conduct transatlantic passenger charters is an appropriate regulation. Before this statutory authority was established by Public Law 87-528 the Bureau would have disqualified them on the basis that they were specialists in the cargo field (with a responsibility to develop cargo), and that they might not have an interest in remaining in the transatlantic charter business if their cargo operations should become profitable. Another reason for opposing them was that a seasonal charter program would not integrate well with their operating patterns. Whether the Bureau would have had a different position had Public Law 87-528 been in effect at the time of briefs is not known, but it would seem that the basis of the Bureau's objections would not have been affected.

(19529, 19530)

The record shows that the all-cargo carriers have a strong historical interest in transatlantic charter services, and that they should not experience the problems which the Bureau foresees. Flying Tiger has performed more transatlantic charters than any of the applicants in this proceeding and in three of the six years between 1957 and 1962 either Flying Tiger or Riddle was the top Part 295 carrier in terms of the number of transatlantic charters. Up to April 1962 the three all-cargo applicants in this case had negotiated contracts calling for 480 charter flights. This number represented 79 percent of all the charter flights that had been contracted for by the Part 295 carriers up to that time.

19530

While Seaboard subsequently transferred its contracts to Capitol because of its program to phase out its Constellations, this is hardly impressive proof of its lack of interest in the transatlantic charters as the Bureau charges.

These carriers have engaged in extensive cargo and passenger operations for the military, and Flying Tiger has performed numerous flights for other governmental and international organizations. These activities have not interfered with their scheduled cargo operations and there is nothing in this record that shows that their transatlantic charter activities have followed a similar pattern. On the basis of 1961 transatlantic charters Seaboard and Flying Tiger had the lowest ratio of ferry miles to live miles among the Part 295 carriers. Thus, if seasonal charter programs will not integrate with their overall operating patterns, it is not evident from this record.

The Bureau acknowledges that the all-cargo carriers have demonstrated a greater stability than the supplementals

present time it is not even known which of the applicants will be entitled to engage in supplemental air transportation on an interim basis and, of course, it will probably be a considerable period before their more permanent type applications under Section 401(d)(3) are finally adjudicated. It is the scope and tenure of this latter authority that has such an important bearing on the comparative qualifications of each supplemental air carrier applicant. In these circumstances a final decision on the applications of Capitol, ONA, Saturn, World, Modern, USOA, Admiral, Cal-Hawaiian, and Paramount in this proceeding should be deferred until the Board has determined the scope of other supplemental air services which it will authorize them to perform pursuant to their pending applications referred to above.

Since Great Lakes is not an applicant for a certificate under Section 401(d)(3) in any collateral proceeding or for

any air carrier authority other than that involved herein, there would be no point in deferring a decision on its application here. As determined earlier transatlantic charter service must be incidental or subordinate to some other air carrier authority. Lacking this Great Lakes would be unable to conduct economical operations within the scope of the authority issued. In the circumstances the public convenience and necessity would not require the grant of its application.

Meanwhile Capitol, Saturn, and ONA, which were the only supplemental air carriers with transatlantic charter contracts for 1962, should be permitted to temporarily continue their activities in this area until final decision in this

case; providing, of course, that they receive interim certificates as supplemental air carriers. These carriers, as their previous records establish, are fit, willing and able to perform transatlantic charter services, and to conform to the Act and the Board's rules and regulations thereunder. Capitol had contracts for 83 transatlantic charter flights for 1962, Saturn for 41, and ONA for 9. Capitol has been a consistent and substantial operator of transatlantic charters since 1959, and the failure to extend its transatlantic charter authority pending decision on its application would not only be unjust but unwarranted. To a lesser extent this also applies to Saturn which in 1961 operated 17 charter flights. While ONA operated only three charters in 1961 and ten in 1960, for the entire 6-year period 1957-1962 it ranks as the top transatlantic charter carrier among the supplemental air carriers. To permit it to continue pending final decision on its application would avoid an interruption in its services which have been continuous since 1957. Moreover, should Slick Airways decide not to engage in transatlantic charters in 1963, the continuance of ONA's authority would fill a void and thus be in the public interest.

19534

The other supplemental air carrier applicants did not operate any transatlantic charters in 1962 and those few that did operate charters prior to 1962 had inconsequential records. Thus, the failure to authorize interim transatlantic charter authority for them pending decision in this case would have no effect upon their operations and should have no effect upon the traveling public.

(19534, 19535)

Since a final decision with reference to the deferred applications should be reached before the end of 1963, the temporary charter authority granted herein should not extend beyond the 1963 charter season which, for all practical purposes, terminates September 30, 1963. Such authority should be in the form of a certificate of public convenience and necessity issued under Section 401(d)(3) which should include as part of its terms, conditions and limitations, a provision making the authority subject to, and conditioned upon, compliance with Part 295 of the Economic Regulations as revised herein.

Amendment to or Modification of Part 295. As previously concluded the basic idea of transatlantic charter service should not be disturbed by including all-expense tour and split charter authority. Thus, a "charter flight" as defined in Part 295.2(a) should continue to be so defined. Also, the definition of charter organization appearing in Part 295.2 (h) should be left intact. ONA's proposal to delete "their immediate families" reference in that part in favor of "members of a family descended from the grandparents of the member or from the grandparents of the member's spouse whether living in the same household or not" has no evidentiary support whatsoever. Moreover, this proposal

19535

would appear to be unenforceable since the only method of establishing eligibility would be through the furnishing of documents establishing the lineage of each charter participant which would be impracticable.

The present limitation on the size of eligible organizations seems to be arbitrary and unnecessary at this time.

While it may have been justified earlier, it has no practical utility in the future regulation of transatlantic charters. The group fare program has no comparable limitation and the Board found no reason to impose such a restriction as a condition of approval. If an organization in excess of 20,000 is still regarded as being indistinguishable from the general public, as was apparently the feeling at the time the restriction was imposed, then the restriction would have been required in the group fare program. However, the fact is that the "affinity" requirement is sufficient to remove group fare traffic from the general public; and correspondingly, the membership requirement in Part 295.30, which is equivalent to the group fare "affinity" requirement, is sufficient to restrict charter traffic from the general public. It is unreasonable that organizations such as the British Bar Association and the Lions Clubs and other similar groups, otherwise meeting the eligibility requirements, should be precluded today from planeload charters simply because their membership exceeds 20,000. Accordingly, Part 295.30 should be modified by deleting the last sentence of that section.

The restrictions on travel agents which are sought to be eliminated, viz., assisting in the formation of charter

groups, handling the sale of air transportation to members of the group, engaging in the administration of a charter flight and soliciting individuals for land tours, as well as receiving any commissions for a charter flight or land tour if the agent is a member of the chartering organization would also appear to have little, if any, merit in the future-

(19536, 19537)

regulation of transatlantic charters. These restrictions were part of the Board's design to contain charters within group eligibility scope. Evidently it was thought that to minimize a travel agent's interest in charter services there would be less likelihood of such services attracting ineligible participants from the general public. An agent with a financial stake in a charter occasioned by commissions and fees for assisting in the formation, etc., would have a strong motive for keeping an otherwise defunct charter operative. In this situation the agent might be tempted to solicit ineligible participants.

The restrictions in question were promulgated at a time when unfavorable experience with a number of the irregular carriers and their agents demanded stringent measures to insure that transatlantic charter services by noncertificated carriers would be confined to the prescribed limits. Under this recommended decision charter services will be provided by six carriers, all of whom will hold such authority under or by virtue of certificates of public convenience and necessity. To possess certificated authority they must have been found or must be found to be fit, willing and able to conform to the provisions of the Act and the rules and regulations issued thereunder. Thus, the

19537

climate for future operations under Part 295 or its equivalent under Part 207 should not demand the strict measures that were engendered by the experiences of the early and mid-fifties.

The carriers authorized to provide transatlantic charters will be carriers whose records show compliance with the Act and regulations. The onus of determining the eligibility

of participants will be upon them and it is up to them to see that their agents live up to the intent of the Board's rules. Under these circumstances there is no plausible reason why travel agents should not be permitted to use their expertise either in aiding charter groups to organize or in administering charter flights for them. Similarly, there is no sound basis for continuing the land tour restriction or the prohibition on commissions. These restrictions are especially offensive to travel agents and in the absence of persuasive reasons for continuing them, they should be eliminated.

Accordingly, Parts 295.20, 295.21, 295.22, and 295.24 which cover the restrictions in question should be deleted, and Part 295.23 modified by striking "nor may he receive directly or indirectly any part of the administrative labor cost referred to in § 295.33(c)." The remaining portion of Part 295.23 and Parts 295.25 and 295.26 should be appropriately renumbered.

On brief Bureau Counsel recommends that the protective requirements of Part 399.37 with respect to (a) liability insurance, and (b) substitute air transportation and incidental expenses on the return portion of the charter flight be embodied in Part 295. These requirements are currently

applicable to the Part 295 carriers, conditioning the grant of seasonal exemptions on compliance with them. They were necessitated by such incidences as that involving President Airlines in June 1961 when that carrier stranded a large number of passengers at Shannon Airport, Ireland, and are designed to insure reliable service.

(19538, 19539)

As pointed out previously, under the provisions of Section 401(n)(1), the issuance of certificates to engage in air transportation is conditioned upon compliance with the regulations or orders issued by the Board governing the filing and approval of policies of insurance in the amount prescribed by the Board, etc. Thus, the Act requires implementation by regulation with respect to liability insurance before certificates can be issued to supplemental air carriers. The recommendation of the Bureau would accomplish this necessary requirement and add other protective conditions which are in the public interest. Accordingly, it is found that the provisions of Part 399.37 with respect to liability insurance and substitute air transportation and incidental expenses on the return portion of the charter flight should be incorporated in Part 295.

In addition to this revision the Bureau recommends that a new provision be added to Part 295.31 to assist in the enforcement of the six months membership requirement of Part 295.2(j). The Bureau proposes that the chartering organization be required to maintain central membership lists containing the date each member joined the organization, and that this list should be available to both the car-

19539

rier and the Board. The Bureau contends that the maintenance of such a list should not be a serious burden since most *bona fide* organizations keep such records.

While the group fare program has a six-month membership requirement similar to Part 295.2(j), such program does not provide central membership lists to enforce the requirement. In the case of the group fares the Board has not conditioned its approval on the maintenance of central

membership lists and in the present case the record does not show that there is a compelling need for such a rule. Accordingly, his recommendation of the Bureau should be denied.

Similarly, other proposed amendments or modifications by other parties should be denied for the lack of evidentiary support. There is attached hereto a draft of Part 295 as revised herein. (Appendix B.)

19540

RECOMMENDATIONS

On the basis of the foregoing findings and conclusions and all facts of record it is recommended that the Board find that:

1. The continuation of transatlantic charter services by United States carriers other than the certificated route passenger carriers, as presently defined by Part 295, would serve a useful public purpose responsive to a public need and would not adversely affect the operations of TWA and Pan American or otherwise be contrary to the public interest.

2. An expansion of the concept of charter to include all-expense tour charters by travel agents and split-charter authority, while increasing the potential utility of transatlantic charter services, would be contrary to the public interest since such an expansion would have severe competitive implications, exposing traffic of TWA and Pan American to diversion at a time when their transatlantic services are experiencing serious economic problems.

(19540, 19541)

3. Considering the possibility that the IATA carriers may place less emphasis on charter services because of their alternate group fare program, the 1963 charter market of the non-IATA carriers, under the present charter concept, could reach and even exceed a volume of 50,000 passengers.

4. Because of the severe seasonality and directionality of the market, it would be virtually impossible for one carrier to adequately and economically serve it; and only several carriers would experience difficulty in meeting its demands in the absence of most favorable conditions.

19541

5. Since, historically, six to eight carriers per year have handled the Part 295 charter business, with an average of six per year carrying all but a nominal part, the future transatlantic market can be adequately served by six carriers.

6. With the all-cargo carrier applicants having a strong historical interest in the transatlantic passenger charter services and the ability to integrate such services with other authorized activities, the public interest requires that they be empowered to continue such services under appropriate regulations, viz., under a revised Part 207 corresponding to the requirements of Part 295.

7. Taking into account the possibility that, under a revised Part 207, Slick Airways, Inc., might decide to engage in transatlantic passenger charters, thus making four all-cargo carrier participants, there would be need for only two transatlantic charter carriers from the supplemental class;

but since the future status of the supplemental applicants is uncertain and is necessary to properly evaluate their qualifications, a final decision on the applications of Capitol, ONA, Saturn, World, Modern, USQA, Admiral, Cal-Hawaiian and Paramount be deferred pending decision on their applications under Section 401(d)(3) in collateral proceedings.

8. In view of the fact that Great Lakes is not an applicant for a certificate under Section 401(d)(3) in any collateral proceeding or for any air carrier authority other than that involved herein, the public convenience and necessity require that its application be denied since transatlantic charter services cannot be economically operated as a sole business.

19542

9. Since Capitol, Saturn, and ONA operated transatlantic charters in 1962 and participated in them on a substantial basis in one or more or all of the preceding years back to 1957, the public convenience and necessity require the temporary certification of these carriers to engage in transatlantic supplemental air transportation (in accordance with the certificates attached as Appendices C, D, and E) pending final decision in this case in order to avoid an interruption in their service which has been beneficial to charter travel and in the public interest.

10. Capitol, Saturn, and ONA are fit, willing and able to provide the air transportation found to be required and to conform to the provisions of the Act and the rules and regulations thereunder.

(19542)

11. Failure to temporarily certificate the remaining supplemental air carrier applicants pending final decision on their applications will not adversely affect their existing operations or charter travel since none of them operated transatlantic charters in 1962 and only a few of them participated on a small basis in one or more of the preceding years.

12. Part 295 of the Economic Regulations, which will prescribe the terms, conditions, and limitations of the temporary service by Capitol, Saturn, and ONA, as well as that to be certificated in the future, be revised in accordance with the attached draft in Appendix B.

13. The application of Great Lakes Airlines, Inc., Docket 11955, be denied, and that the applications of The Flying Tiger Line, Inc., Docket 6668, Riddle Airlines, Inc., Docket 12152, and Seaboard World Airlines, Inc., Docket 11971 be dismissed.

19553

APPENDIX B

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

§295.1 *Applicability.*

This part establishes the requirements governing operations of transatlantic supplemental air transportation under temporary certificates of public convenience and necessity issued pursuant to Section 401(d)(3) of the Act.

§295.2 *Definitions.* As used in part, unless the context otherwise requires—

(a) "Charter flight" means transatlantic supplemental air transportation performed by a direct air carrier where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage, on a time, mileage or trip basis:

(1) by a person for his own use (including a direct air carrier or surface carrier when such aircraft is engaged solely for the transportation of company personnel or commercial passenger traffic in cases of emergency); or

(2) by a representative (or representatives acting jointly) of a group for the use of such group (provided no such representative is professionally engaged in the formation of groups for transportation or in the solicitation or sale of transportation services);

With the consent of the charterer, the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

(19553, 19554)

(b) "Pro rata charter" means a charter the cost of which is divided among the passengers transported.

(c) "Single entity charter" means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

(d) "Mixed charter" means a charter the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

(e) "Person" means any individual, firm, association, partnership, or corporation.

(f) "Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

(g) "Charter group" means that body of individuals who shall actually participate in the charter flight, except that this term shall not be applicable in the case of tour charters.

19554

(h) "Charter organization" means that organization, group or other entity from whose members (and their immediate families) a charter group is derived, except that this term shall not be applicable in the case of tour charters.

(i) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

(j) "*Bona fide* members" (not applicable in the case of tour charters) means those members of a charter organ-

ization who have not joined the organization merely to participate in the charter as the result of solicitation directed to the general public. Presumptively persons are not *bona fide* members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans and unless they have actually been members for a minimum period of six months prior to the starting flight date. This presumption will not be applicable in the case of charters composed of (1) students and educational staff of a single school, and immediate families thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants in a formal academic study course abroad. In the case of all other charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

(k) "Solicitation of the general public" (not applicable in the case of tour charters) means (1) a solicitation going beyond the *bona fide* members of an organization (and their immediate families), such as advertising directed to the general public by radio, television, newspaper, or magazine, or (2) the solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

§295.3 *Waiver.*

A waiver of any of the provisions of this regulation may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days

prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

19555

§295.4 *Separability.*

If any provision of this part or the application thereof to any air transportation, person, class of person, or circumstance is held invalid, neither the remainder of the part nor the application of such provision to other air transportation, persons, classes of persons, or circumstances shall be affected thereby.

§295.5 *Reporting and record retention.*

(a) Fifteen days after the end of each calendar month, each carrier operating pursuant to this part shall file with the Board's Bureau of Economic Regulation a report setting forth the following information pertaining to each charter flight performed during said month pursuant to this part:

(1) Date of trip;

(2) Points served;

(3) Number of round-trip and one-way passengers;

(4) Name of chartering organization;

(5) Description of chartering organization disclosing basis for conclusion that the group is *bona fide* (identify criteria relied upon) or, in the case of tour charters, description of tour to extent

necessary to establish conformance with requirements of this part;

(6) Name of travel agent; and

(7) Construction of tariff charge.

(b) Prior to performing any supplemental air transportation pursuant to this part the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof.

(c) Each air carrier holding operating authority pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

19556

SUBPART A—PROVISIONS RELATING TO PRO RATA CHARTERS

REQUIREMENTS RELATING TO AIR CARRIERS

§295.11 *Solicitation and formation of a charter group.*

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight.

(19556, 19557)

§295.12 *Pre-trip notification.* Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this regulation, Part 295.* The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this regulation and that the charterer shall within due time submit to the carrier such information as specified in §§295.34 and 295.35 hereof and submit to each charter participant the information identified in §295.34. The carrier shall also require that the charterer and any travel agent involved shall furnish it in due time for review before flight the information required in §§295.36 and 295.23, respectively.

§295.13 *Tariffs to be on file.*

(a) No air carrier shall perform any supplemental air transportation unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for the use of the entire capacity of one or more aircraft in such supplemental air transportation and showing all rules, regulation practices and services in connection with such supplemental air transportation, including eligibility requirements for charter groups

19557

not inconsistent with those established in this part.

(b) Tariffs shall not contain any provisions which are inconsistent with the standard insurance coverage or with

* Copies of this regulation are available by purchase from the Superintendent of Documents, Washington 25, D. C. Single copies will be furnished without charge on written request to the Publications Section, Civil Aeronautics Board, Washington 25, D. C.

the obligations relative to substitute air transportation and payment of passengers' incidental expenses established by §295.14.

§295.14 *Terms of service.*

(a) The total charter price and other terms of service rendered pursuant to this part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective charter flight and the contract must be for the entire capacity of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown in the performance of the charter, *provided* that the carrier shall not charge the charterer for ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

(b) Insurance coverage shall be maintained in full force and effect as follows:

(1) *Minimum limits of liability.*

(i) *Aircraft passenger bodily injury liability.* A minimum limit for any one passenger of $50,000 and a minimum limit for each accident in any one aircraft of an amount equal to the total produced by multiplying $50,000 by 75 percent of the total number of seats or by 75 percent of the total number of passengers carried in the aircraft, whichever is greater.

(ii) *Aircraft bodily injury liability (excluding passengers).* A minimum of $50,000 for one person in any one

accident, and a minimum limit of $500,000 for each accident.

(iii) *Aircraft property damage liability.* A minimum of $500,000 for each accident.

(2) *Terms and conditions of coverage.*

(i) Such insurance contracts shall provide for payment, within the specified minimum limits of liability, by the insurer of any final judgments recovered against the insured for bodily injury to or death of any person, or loss of or damage to property of others, resulting from negligence by the insured, or his duly authorized agent, in the operation, maintenance or use of any aircraft on a flight conducted pursuant to authority granted by the Civil Aeronautics Board to conduct transatlantic passenger charter

flights or under an invalid claim of such authority or on the return portion of a charter flight which was originally conducted under either such authority or such claim.

(ii) The liability of the insurer shall apply to any and all such flights conducted by the insured air carrier, irrespective of whether the aircraft involved in such liability are specifically described in the policy and shall not be subject to any exclusion by virtue of violations, by said carrier, of any applicable safety provisions of the Federal Aviation Act of 1958, as amended, or of any rule, regulation, order or other legally imposed safety requirement by the Federal Aviation Agency.

(iii) Such liability shall not be contingent upon the financial condition, solvency or freedom from bankruptcy of the

insured. The limits of the insurance company's liability for the amounts provided herein shall apply separately to each accident, and any payment under the policy because of any one accident shall not reduce the liability of the insurance company for payment of final judgments resulting from any other accident.

(iv) Within the limits of liability herein provided, the insurance company shall not be relieved from liability by any condition in the policy or any endorsement thereon, or violation thereof by the insured air carrier, other than the exclusions set forth in §295.14(b)(3), *infra*, or such other exclusions as may be individually approved by the Board. Such policy shall not be subject to cancellation, change or suspension, by either party, on less than 30 days' notice, by registered mail, to both the other party to the insurance contract and the Board.

(3) *Authorized exclusions of liability.* Unless other exclusions are individually approved by the Board, such policy or policies may contain only one or more of the following authorized exclusions:

"The insurance afforded under this policy shall not apply to:

(i) Any loss against which the named insured has other valid and collectible insurance, except that the limits of liability provided under this policy shall be excess of the limits provided by such other valid and collectible insurance but in no event exceeding the limits of liability expressed elsewhere in this policy;

(19558, 19559)

(ii) Any loss arising from the ownership, maintenance or use of any type of aircraft not declared to the Insurer in accordance with the terms and conditions of this policy;

19559

(iii) Liability assumed by the Insured under any contract or agreement;

(iv) Bodily injury, sickness, disease, mental anguish or death of any employee of the Insured while engaged in the duties of his employment, or any obligation for which the Insured or any Company as his Insurer may be held liable under any Workmen's Compensation or occupational disease law;

(v) Damage to or destruction of property owned, rented, occupied or used by, or in the care, custody or control of the Insured, or carried in or on any aircraft with respect to which the insurance afforded by this policy applies;

(vi) Personal injuries or death or damage to or destruction of property, caused directly or indirectly, by hostile or warlike action, including action in hindering, combating or defending against an actual, impending or expected attack by any government or sovereign power, *de jure* or *de facto*, or military, naval, or air forces, or by an agent of such government, power, authority or forces; the discharge, explosion, or use of any weapon of war employing atomic fission or

atomic fusion, or radio-active materials, insurrection, rebellion, revolution, civil war or usurped power, including any action in hindering, combating, or defending against such an occurrence; or confiscation by any government or public authority."

(4) *Source of coverage.* Such insurance policy shall be issued by a reputable and financially responsible insurance company which is legally authorized to issue policies of that type in any state, territory or possession of the United States.

(5) *Submission of policy and certificate of insurance.*

(i) Each carrier shall maintain on file with the Board a copy of the policy or policies of insurance and all endorsements thereof and a duly executed certificate of insurance, signed by an authorized representative of the insurer. Whenever any change is made in a previously issued policy, a new certificate of insurance shall be filed with the Board and such certificate shall be accompanied by a copy of any endorsement or endorsements made to such policy.

19560

(ii) Each such certificate shall expressly certify that the insurance company has issued to the insured air carrier a policy or policies which:

(aa) Incorporates the minimum limits of liability set forth in subparagraph (1) of this paragraph,

(bb) Contains the specific terms and conditions of coverage set forth in subparagraph (2) of this paragraph, and

(19560)

(cc) Incorporates only exclusions which have been specifically authorized in subparagraph (3) of this paragraph or individually approved by the Board.

(6) *Publicizing Insurance Coverage.* Any publicizing by the air carrier of the extent of its passenger liability insurance coverage shall include a notation concerning the applicability of the Warsaw Convention and shall specify the amount recoverable under its provisions.

(c) The air carrier shall provide substitute transportation and pay incidental expenses, with respect to delays on return portions of flights, as follows:

(1) *Substitute air transportation.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this subparagraph.

(ii) As soon as the air carrier discovers, or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than forty-eight hours, such air carrier shall arrange for and pay the costs of substitute air transportation for the charter group on another charter flight, operated by any other air carrier or foreign air carrier.

(iii) When neither the charter transportation contracted for nor substitute transportation has been performed be-

fore the expiration of forty-eight hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually

19561

ticketed flights and the chartered air carrier shall pay the costs of such air transportation to the substitute air carrier or foreign air carrier.

(iv) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this subparagraph, periods of delay caused by the prohibition of flights from the airport of departure because of weather or other operational conditions shall be excluded if, and while, the air carrier had an airworthy aircraft which is capable of transporting the charter group in a condition of operational readiness posted at such airport.

(2) *Incidental expenses.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the sixth hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this subparagraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent,

for the account of each passenger, including infants and children traveling at reduced fares.

(ii) Such payments shall be made at the rate of $16.00 for each full twenty-four hour period of delay following the scheduled departure time. However, the sum of $8.00 shall be paid for each passenger delayed six hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8.00 shall be paid for each passenger delayed in installments of $4.00 for the first and second succeeding six-hour period of delay, or any fractional part thereof. If the delay continues beyond a period of 24 hours following the scheduled departure time, such payments shall be made in equal installments of $4.00 for each further six-hour period of delay, or any fractional part thereof. *Provided, however,* That the air carrier may, at its option, discharge this obligation by providing free meals and lodging in lieu of making such payments. The obligation of the air carrier to pay incidental expenses or provide free meals and lodging shall cease when substitute air transportation is provided in accordance with the provisions of subparagraph (e)(1) of this section.

(d) Each and every contract for a transatlantic charter to be operated hereunder shall incorporate the provisions of subparagraphs (b) and (c) above concerning insurance, substitute transportation, and incidental expenses.

19562

(e) The carrier shall require full payment of the total charter price or the posting of a satisfactory bond for full payment prior to the commencement of the air transportation.

(f) In the case of a round-trip charter, one-way passengers shall not be carried except that up to five percent of the charter group may be transported one way in each direction. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round-trip is chartered separately in order to avoid the five percent limitation aforesaid. In the case of a charter contract calling for two or more round trips, there shall be no intermingling of passengers and each planeload group shall move as a unit in both directions.

§295.15 *Agent's commission.* The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of five percent of the total charter price as set forth in the carrier's charter tariff on file with the Board, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§295.16 *Prohibition against payments or gratuities.* A carrier shall make no payments nor extend gratuities of any kind, directly or indirectly, to any member of a chartering organization in relation either to air transportation or land tours or otherwise. Nothing in this section shall restrict a carrier from offering to each member of the charter group such advertising and good will items as are customarily extended to individually-ticketed passengers (e.g., canvas traveling bag or a money exchange computer).

(19562, 19563)

REQUIREMENTS RELATING TO TRAVEL AGENTS

§295.20 *Prohibition against double compensation.* A travel agent may not receive a commission from both the direct air carrier and the charterer for the same service.

§295.21 *Prohibition against payments or gratuities.* A travel agent shall make no payments nor extend gratuities of any kind, directly or indirectly, to any member of a chartering organization whether in relation to air transportation or otherwise. Nothing in this section shall restrict a travel agent from offering to each member of the charter group such advertising and good will items as are customarily extended to individually-ticketed passengers (e.g., a canvas traveling bag or a money exchange computer).

19563

§295.22 *Statement of supporting information.* Travel agents shall execute, and furnish to air carriers, Section A of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

REQUIREMENTS RELATING TO THE CHARTERING ORGANIZATION

§295.30 *Solicitation of charter participants.* As the following terms are defined in §295.2 hereof, members of the charter group may be solicited only from among the *bona fide* members of an organization, club or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public.

§295.31 *Passengers on charter flights.* Only *bona fide* members of the charterer, and their immediate families, may participate as passengers on a charter flight. Where the charterer is engaging round-trip transportation, one-way passengers shall not participate in the charter flight except as provided in §295.14(f) hereof. When more than one round trip is contracted for, intermingling between flights or reforming of plane-load groups shall not be permitted and each plane-load group must move as a unit in both directions.

§295.32 *Participation of immediate families in charter flights.* The immediate family of any *bona fide* member of a charter organization may participate in a charter flight. The immediate family of such member shall be construed to include only the following persons who are living in his household, namely, the spouse, dependent children, and parents of such member.

§295.33 *Charter costs.*

(a) The costs of charter flights shall be prorated equally among all charter passengers and no charter passenger shall be allowed free transportation; except that (1) children under twelve years of age may be transported at a charge less than the equally prorated charge; (2) children under two years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be

(19563, 19564)

refunded to the participants in the same ratio as the charges were collected.

19564

(c) Reasonable administrative costs of organizing the charter may be divided among the charter participants. Such costs may include a reasonable charge for compensation to members of the charter organization for actual labor and personal expenses incurred by them. Such charge shall not exceed $300 (or $500 where the charter participants number more than 80) per round-trip flight. Neither the organizers of the charter, nor any member of the chartering organization, may receive any gratuities or compensation, direct or indirect, from the carrier, the travel agent, or any organization which provides any service to the chartering organization whether of an air transportation nature or otherwise. Nothing in this section shall prevent any member of the charter group from accepting such advertising and good will items as are customarily extended to individually-ticketed passengers (e.g., a canvas traveling bag or a money exchange computer).

(d) If the total expenditures, including among other items compensation to members of the chartering organization, referred to in §295.33(c) above, but exclusive of expenses for air transportation or land tours, exceed $750 per round-trip flight, such expenditures shall be supported by properly authenticated vouchers to be given to the carrier with the "Post Flight Report" required pursuant to §295.34.

§295.34 *Statements of charges.*

(a) Any announcements or statements by the charterer to prospective charter participants of the anticipated indi-

vidual charge for the charter shall clearly identify the portion of the charges to be separately paid for the air transportation, for the land tour, and for the administrative expenses of the charterer.

(b) Within 15 days after completion of each one-way or round-trip flight the charterer shall complete and supply to each charter participant and the air carrier involved a detailed report showing the charge per passenger transported and the charterer's total receipts and expenditures. The report shall be submitted in the form of, and contain such information including the above as more fully specified by, the "Transatlantic Charter—Post Flight Report" annexed hereto and made a part of this regulation.

§295.35 *Passenger manifests.*

(a) Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of the persons to be transported and specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described). The manifest may include "stand-by" participants (by name, address and relationship to charterer).

19565

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger manifest as follows:

(1) A *bona fide* member of the chartering organization at the time the organization first gave notice to its members of firm charter plans and will have been a *bona fide* member of the chartering organization for at least six

months prior to the starting flight date. Specify on the passenger manifest as "(1) member."

(2) The spouse, dependent child or parent of a *bona fide* member who lives in such member's household. Specify on the passenger manifest as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) *Bona fide* members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participating in the charter flight was permitted by the Board pursuant to request for waiver. Specify on the passenger manifest as "(3) special" or "(3) member" (where participants are from a study or campus group or from a Government agency, industrial plant or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the eastbound and westbound trips must be explained on the manifest.

(d) Attached to such manifest must be a *certification,* signed by a duly authorized representative of the charterer, reading:

"The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a *bona fide* member of the chartering organization at the time the chartering organization first gave notice to its

members of firm charter plans, and will have been a member for at least six months prior to the starting flight date, or (2) is a *bona fide* member of an entity consisting of (a) students and educational staff of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household, or (5) is a *bona fide* participant in a charter composed of participants in a formal academic study course abroad.

(Signature) ."

19566

§295.36 *Statement of supporting information.* Charterers shall execute and furnish to air carriers Section B of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

SUBPART B—PROVISIONS RELATING TO SINGLE ENTITY CHARTERS

§295.40 *Tariffs to be on file.* The provisions of §295.13 shall apply to charters under this subpart.

§295.41 *Terms of service.*

(a) The total charter price and other terms of service shall conform to those set forth in the applicable tariff filed

in accordance herewith and the contract shall be for the entire capacity of one or more aircraft.

(b) The terms of service delineated in §295.13(b), 14 (b)(c) and (d) shall be applicable in the case of single entity charters.

§295.42 *Commissions paid to travel agents.* No direct air carrier shall pay a travel agent any commission in excess of five percent of the total charter price or more than the commission related to charter flights paid to an agent by a carrier certificated to fly the same route, whichever is greater.

SUBPART C—PROVISIONS RELATING TO MIXED CHARTERS

§295.50 *Applicable rules.* The rules set forth in Subpart A hereof shall apply in the case of mixed charters.

SUBPART D—PROCEDURE FOR ADVISORY OPINION ON THE ELIGIBILITY OF A CHARTERER

§295.80 *Advisory opinion.* An air carrier of prospective charterer may request an advisory opinion from the Bureau of Economic Regulation, Civil Aeronautics Board, Washington 25, D. C., regarding the eligibility of the prospective charterer to obtain charter service in accordance with this regulation. The Bureau's opinion will be based on the representations submitted and shall not be binding upon the Board in any proceeding in which the lawfulness of the respective charter may be in issue. Such representations should include as much of the information specified by Section B, Part II, of the Statement of Supporting Information as is available to the person requesting the advisory opinion.

20642

E-20530
E-20531

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served: March 3, 1964

Docket 11908 *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

SUPPLEMENTAL OPINION AND ORDER

Adopted: February 24, 1964

BY THE BOARD:

On October 8, 1963, the Board reached its decision in the above-entitled proceeding (see Appendix A), and pursuant to section 801 of the Act, submitted this decision to the President of the United States for his approval. By letter dated February 18, 1964, and appropriate notation on the Board's proposed order, the President approved the Board's decision to award the transatlantic charter certificates to Capitol Airways and Saturn Airways, but returned for further evaluation the decision to award such a certificate to Overseas National Airways (ONA). In view of this Presidential action we will proceed to issue appropriate certificates to Capitol and Saturn. We will also issue the revised Part 295 of the Economic Regulations governing transatlantic charter operations as pro-

vided in our opinion submitted to the President. The only matter remaining to be disposed of is that portion of the President's directive returning this proceeding to the Board for further evaluation as to ONA.

With regard to ONA, the President's letter states as follows:

> "I have been advised that subsequent to the adoption of the Board's decision in the *Transatlantic Charter Investigation* (Docket 11908 et al.), Overseas National
>
> **20643**
>
> Airways filed a petition of bankruptcy suspending all operations. Its future would therefore appear to be in doubt.
>
> "In view of the unfavorable impression that might be created abroad by the participation of a financially unstable air carrier in United States flag operations, and because of other implications for the foreign policy of the United States, I am returning the *Transatlantic Charter Investigation* to the Board for further evaluation of this situation."[1]

These observations by the President indicate no disagreement with the Board's findings as to fitness of ONA based upon the evidentiary record, nor any disagreement with the decision to select ONA over other unsuccessful

---

[1] The President's letter also stated, "With respect to the other two carriers recommended for temporary certification by the Board, I approve the Board's decision." On the Board's proposed order accompanying its opinion, the President noted: "APPROVED: as to Capitol Airways and Saturn Airways; returned for further evaluation as to Overseas National Airways, in accordance with my letter to the Board of February 18, 1964."

applicants. Rather, it appears that the President wishes a further evaluation of ONA for the purpose of determining whether any of the developments since the Board's original decision have so changed the qualifications of the carrier as to render it financially unfit. In order to make such a determination as promptly as possible, we will set this matter for an expeditious hearing at a very early date.

In view of the foregoing, IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to Capitol Airways, Inc., and Saturn Airways, Inc.;

20644

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on April 18, 1964;

3. That the record in this proceeding be and it hereby is reopened for further hearing on an expedited basis, to determine whether any developments since the Board's original decision herein have rendered ONA no longer financially fit to conduct transatlantic charter operations authorized under the proposed certificate for that carrier;

4. That paragraph "3" of Order E-20531, terminating the Board investigation, Docket 11908 *et al.*, be and it hereby is vacated.[2]

---

[2] Upon publication of revised Part 295 in the Federal Register, we will delete the reference to ONA in the preamble to reflect the President's action.

(20644)

5. That this order shall become effective upon the date of its approval by the President of the United States.

BOYD, Chairman, MURPHY, Vice Chairman, GURNEY, MINETTI and GILLILLAND, Members, concurred in the above opinion and order.

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON

February 29, 1964

(20645)

20645

Order No. E-20530

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to en-

gage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing,

that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in ac-

cordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on April 18, 1964, and shall terminate five years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of October 8, 1963, insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 8th day of October, 1963.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on February 18, 1964.

(20647)

20647

Order No. E-20530

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

SATURN AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to en-

gage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event

the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in ac-

(20648)

cordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on April 18, 1964, and shall terminate five years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of October 8, 1963, insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 8th day of October, 1963.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on February 18, 1964.

20649

Order No. E-20531

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 8th day of October, 1963

Docket 11908 *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amended regulations of the Board designated Part 295 of the Economic Regulations, which are attached hereto and made a part hereof;

(20649)

2. That said amended regulations shall be effective on April 18, 1964;

3. That the Board investigation, Docket 11908 *et al.*, be and it hereby is terminated.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

20650

Regulation No. ER-400

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations
Revision of Part 295
Effective: April 18, 1964
Adopted: October 8, 1963

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION REVISION OF PART

Present Part 295, as amended, sets out the general requirements governing applications for and operations under special orders to carriers holding certificates of public convenience and necessity for the carriage of property only and property and mail only pursuant to Part 207 of the Economic Regulations and amendments to interim operating certificates of supplemental carriers operating under section 7 of Public Law 87-528, authorizing for periods up to 180 days but terminating not later than September 30 of any year, the performance of pro rata, mixed and/or single entity charter flights for transatlantic passengers.

In its decision in the *Transatlantic Charter Investigation,* Docket 11908 *et al.*, dated October 8, 1963, the Board granted certificates of public convenience and necessity to three supplemental air carriers (Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc.)

20651

under section 401(d)(3) of the Act, for supplemental air transportation of persons and their personal baggage between points in the 48 contiguous states, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand, for a period of five years, subject to the terms, conditions and limitations of this revised Part 295. The revision contained herein implements the determination contained in the aforesaid order by redefining charter flights and specifying the terms, limitations and conditions under which such certificated transatlantic passenger charter operations shall be conducted.

The supplemental order of investigation in the *Transatlantic Charter Investigation*[1] specified that one of the subjects of investigation should be under what terms and conditions, if any, one or more carriers should be certificated to conduct transatlantic passenger charters. The Board stated that it contemplated a full consideration of the rules which should govern such operations, including, but not

20652

limited to, the rules established in Part 295 and that in determining rules to govern the broader and more permanent operations which might be authorized therein, it was patent that the Board should have the benefit of a full evidentiary hearing; the Board invited the applicants and all parties not only to offer any suggestions which they might have with regard to the suitability of the rules of Part 295 for a

[1] Order E-17190, July 18, 1961. This order was published in the Federal Register. (26 F. R. 6752)

long-range program, but also to come forward with any new concepts which they might consider appropriate. The examiner attached to his recommended decision in that proceeding a specific revision of Part 295 based upon the current version, but modified to the extent he deemed called for by the evidence and briefs of the parties. Although the regulation we are reissuing differs in some of its provisions from the regulation recommended by the examiner and/or the parties, all of the provisions were either taken from the existing regulation or Policy Statement No. 17 (Sec. 399.41), or their substance was the subject of intensive examination and argument by the parties. Interested parties have, therefore, been afforded an opportunity to comment on the substance of this regulation in connection with the above-mentioned proceeding. In view of the foregoing circumstances, the Board finds that further notice and public procedure hereon are unnecessary and not in the public interest.

Accordingly, the Civil Aeronautics Board hereby reissues Part 295 of the Economic Regulations (14 CFR Part 295), effective April 18, 1964, as follows:

Sec.

295.1 Applicability.
295.2 Definitions.
295.3 Waiver.
295.4 Separability.
295.5 Reporting and record retention.

Subpart A—Provisions Relating to Pro Rata Charters

295.10 Applicability of subpart.

(20653, 20654)

Requirements Relating to Air Carriers

295.11 Solicitation and formation of a chartering group.
295.12 Pre-trip notification.
295.13 Tariffs to be on file.
295.14 Terms of service.
295.15 Agent's commission.
295.16 Prohibition against payments or gratuities.

Requirements Relating to Travel Agents

295.20 Prohibition against double compensation.
295.21 Prohibition against payments or gratuities.
295.22 Statement of supporting information.

Requirements Relating to the Chartering Organization

295.30 Solicitation of charter participants.
295.31 Passengers on charter flights.
295.32 Participation of immediate families in charter flights.
295.33 Charter costs.
295.34 Statements of charges.
295.35 Passenger manifests.
295.36 Statement of supporting information.

20654

Subpart B—Provisions Relating to Single Entity Charters

295.39 Applicability of subpart.
295.40 Tariffs to be on file.
295.41 Terms of service.
295.42 Commissions paid to travel agents.

Subpart C—Provisions Relating to Mixed Charters

295.50 Applicable rules.

Subpart D—Procedure for Advisory Opinion on the Eligibility of a Charterer

295.60 Advisory opinion.

Authority: §§295.1 to 295.60 issued under sec. 204(a), 72 Stat. 743, 49 U. S. C. 1324. Interpret or apply sec. 401 (d)(3) and sec. 401(n); 76 Stat. 143, 144; 49 U. S. C. 1371.

20655

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

§ 295.1 *Applicability.*

This part establishes the terms, conditions, and limitations of transatlantic supplemental air transportation.

§ 295.2 *Definitions.* As used in this part, unless the context otherwise requires—

(a) "Transatlantic supplemental air transportation" means charter flights in air transportation performed pursuant to a certificate of public convenience and necessity issued under section 401(d)(3) of the Act authorizing the holder to engage in supplemental air transportation of persons and their personal baggage between points within the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

(20655)

(b) "Charter flight" means air transportation performed by a direct air carrier where (1) the entire capacity of one or more aircraft has been engaged for the movement of persons and their personal baggage, on a time, mileage or trip basis:

(i) by a person for his own use (including a direct air carrier or surface carrier when such aircraft is engaged solely for the transportation of company personnel or commercial passenger traffic in cases of emergency); or

(ii) by a representative (or representatives acting jointly) of a group for the use of such group;

or (2) one-half the capacity of an aircraft has been engaged by a person for his own use or by a representative or representatives of a group for the use of such group and the remaining half of the capacity of such aircraft has been engaged by another person for his own use or by a representative or representatives of a second group.

With the consent of the charterer, the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

(c) "Pro rata charter" means a charter the cost of which is divided among the passengers transported.

(d) "Single entity charter" means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

(e) "Mixed charter" means a charter the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

(f) "Person" means any individual, firm, association, partnership, or corporation.

(g) "Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

20656

(h) "Charter group" means that body of individuals who shall actually participate in the charter flight.

(i) "Charter organization" means that organization, group or other entity from whose members (and their immediate families) a charter group is derived.

(j) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

(k) "*Bona fide* members" means those members of a charter organization who have not joined the organization merely to participate in the charter as the result of solicitation directed to the general public. Presumptively persons are not *bona fide* members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans and unless they have actually been members for a minimum period of six months prior to the starting flight date. This presumption will not be applicable in the case of charters composed of (1) students and educational staff of a single school, and immediate families thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants

(20656, 20657)

in a formal academic study course abroad. In the case of all other charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

(1) "Solicitation of the general public" means (1) a solicitation going beyond the *bona fide* members of an organization (and their immediate families), such as advertising directed to the general public by radio, television, newspaper, or magazine, or (2) the solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

§ 295.3 *Waiver.*

A waiver of any of the provisions of this regulation may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

20657

§ 295.4 *Separability.*

If any provision of this part or the application thereof to any air transportation, person, class of person, or circumstance is held invalid, neither the remainder of the part nor the application of such provision to other air transportation, persons, classes of persons, or circumstances shall be affected thereby.

§ 295.5 *Reporting and record retention.*

(a) Fifteen days after the end of each calendar month, each carrier operating pursuant to this part shall file with the Board's Bureau of Economic Regulation a report setting forth the following information pertaining to each charter flight performed during said month pursuant to this part:

(1) Date of trip;

(2) Points served;

(3) Number of round-trip and one-way passengers;

(4) Name of chartering organization;

(5) Description of chartering organization disclosing basis for conclusion that the group is *bona fide* (identify criteria relied upon);

(6) Name of travel agent; and

(7) Construction of tariff charge.

(b) Prior to performing any supplemental air transportation pursuant to this part the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof.

(c) Each air carrier operating pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

SUBPART A—PROVISIONS RELATING TO PRO RATA CHARTERS

§ 295.10 *Applicability of this subpart.*

This subpart sets forth the special rules applicable to pro rata charters.

(20657, 20658)

REQUIREMENTS RELATING TO AIR CARRIERS

§ 295.11 *Solicitation and formation of a chartering group.*

A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip.

20658

§ 295.12 *Pre-trip notification.* Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this regulation, Part 295.* The charter contract shall include a provision that the charterer and any agent thereof, shall only act with regard to the charter in a manner consistent with this regulation and that the charterer shall within due time submit to the carrier such information as specified in §§ 295.34 and 295.35 hereof and submit to each charter participant the information identified in § 295.34. The carrier shall also require that the charterer and any travel agent involved shall furnish it in due time for review before flight the information required in §§ 295.36 and 295.22, respectively.

§ 295.13 *Tariffs to be on file.*

No air carrier shall perform any supplemental air transportation unless such air carrier shall have on file with

* Copies of this regulation are available by purchase from the Superintendent of Documents, Washington, D. C., 20402. Single copies will be furnished without charge on written request to the Publications Unit, Civil Aeronautics Board, Washington, D. C., 20428.

the Board a currently effective tariff showing all rates, fares, and charges for the use of the entire capacity or one-half the capacity of one or more aircraft in such supplemental air transportation and showing all rules, regulation practices and services in connection with such supplemental air transportation, including eligibility requirements for charter groups not inconsistent with those established in this part.

§ 295.14 *Terms of service.*

(a) The total charter price and other terms of service rendered pursuant to this part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective charter flight and the contract must be for the entire capacity or for one-half the capacity of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown in the performance of the charter, *provided* that the carrier shall not charge the charterer

for ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

(b) Insurance coverage shall be maintained in compliance with the insurance requirements of Part 208 of the Economic Regulations.

(c) The air carrier shall provide substitute transportation and pay incidental expenses, with respect to delays on return portions of flights, as follows:

(20659)

(1) *Substitute air transportation.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this subparagraph.

(ii) As soon as the air carrier discovers, or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than forty-eight hours, such air carrier shall arrange for and pay the costs of substitute air transportation for the charter group on another charter flight, operated by any other air carrier or foreign air carrier.

(iii) When neither the charter transportation contracted for nor substitute transportation has been performed before the expiration of forty-eight hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually ticketed flights and the chartered air carrier shall pay the costs of such air transportation to the substitute air carrier or foreign air carrier.

(iv) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this subparagraph, periods of delay caused by

the prohibition of flights from the airport of departure because of weather or other operational conditions shall be excluded if, and while, the air carrier had an airworthy aircraft which is capable of transporting the charter group in a condition of operational readiness posted at such airport.

(v) Air carriers may subcontract the performance of transatlantic passenger charter services which they have contracted to perform, only to air carriers authorized by the Board to perform such services.

20660

(2) *Incidental expenses.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the sixth hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this subparagraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent, for the account of each passenger, including infants and children traveling at reduced fares.

(ii) Such payments shall be made at the rate of $16.00 for each full twenty-four hour period of delay following the scheduled departure time. However, the sum of $8.00 shall be paid for each passenger delayed six hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8.00

(20660)

shall be paid for each passenger delayed in installments of $4.00 for the first and second succeeding six-hour period of delay, or any fractional part thereof. If the delay continues beyond a period of 24 hours following the scheduled departure time, such payments shall be made in equal installments of $4.00 for each further six-hour period of delay, or any fractional part thereof. *Provided, however,* That the air carrier may, at its option, discharge this obligation by providing free meals and lodging in lieu of making such payments. The obligation of the air carrier to pay incidental expenses or provide free meals and lodging shall cease when substitute air transportation is provided in accordance with the provisions of subparagraph (c)(1) of this section.

(d) Each and every contract for a transatlantic charter to be operated hereunder shall incorporate the provisions of subparagraphs (b) and (c) above concerning insurance, substitute transportation, and incidental expenses.

(e) The carrier shall require full payment of the total charter price or the posting of a satisfactory bond for full payment prior to the commencement of the air transportation.

(f) In the case of a round-trip charter, one-way passengers shall not be carried except that up to five percent of the charter group may be transported one way in each direction. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid the five percent limitation aforesaid. In the case of a charter contract calling for two or more round trips, there shall be no intermingling of passengers and each

plane-load or one-half plane-load group shall move as a unit in both directions.

20661

§ 295.15 *Agent's commission.* The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of five percent of the total charter price as set forth in the carrier's charter tariff on file with the Board, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 295.16 *Prohibition against payments or gratuities.* A carrier shall make no payments nor extend gratuities of any kind, directly or indirectly, to any member of a chartering organization in relation either to air transportation or land tours or otherwise. Nothing in this section shall preclude a carrier from paying a commission (within the limits of section 295.15) to a member of a chartering organization if such member is its agent, or restrict a carrier from offering to each member of the charter group such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, canvas traveling bag or a money exchange computer).

REQUIREMENTS RELATING TO TRAVEL AGENTS

§ 295.20 *Prohibition against double compensation.* A travel agent may not receive a commission from both the direct air carrier and the charterer for the same service.

§ 295.21 *Prohibition against payments or gratuities.* A travel agent shall make no payments nor extend gratuities

of any kind, directly or indirectly, to any member of a chartering organization whether in relation to air transportation or otherwise. Nothing in this section shall restrict a travel agent from offering to each member of the charter group such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, a canvas traveling bag or a money exchange computer).

§ 295.22 *Statement of supporting information.* Travel agents shall execute, and furnish to air carriers, Section A of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

REQUIREMENTS RELATING TO THE CHARTERING ORGANIZATION

§ 295.30 *Solicitation of charter participants.* As the following terms are defined in § 295.2 hereof, members of the charter group may be solicited only from among the *bona fide* members of an organization, club or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public.

§ 295.31 *Passengers on charter flights.* Only *bona fide* members of the charterer, and their immediate families, may participate as passengers on a charter flight. The charterer must maintain a central membership list, available for inspection by the carrier or Board representative, which shows the date each person became a member.*

* Where the charter is based on employment in one entity or student status at a college, records of the corporation, agency or college will suffice to meet this requirement.

Where the charterer is engaging round-trip transportation, one-way passengers shall not participate in the charter flight except as provided in § 295.14(f) hereof. When more than one round trip is contracted for, intermingling between flights or reforming of plane-load or one-half plane-load groups shall not be permitted and each such group must move as a unit in both directions.

§ 295.32 *Participation of immediate families in charter flights.* The immediate family of any *bona fide* member of a charter organization may participate in a charter flight.

§ 295.33 *Charter costs.*

(a) The costs of charter flights shall be prorated equally among all charter passengers and no charter passenger shall be allowed free transportation; except that (1) children under twelve years of age may be transported at a charge less than the equally prorated charge; (2) children under two years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

(c) Reasonable administrative costs of organizing the charter may be divided among the charter participants. Such costs may include a reasonable charge for compensa-

tion to members of the charter organization for actual labor and personal expenses incurred by them. Such

20663

charge shall not exceed $300 (or $500 where the charter participants number more than 80) per round-trip flight. Neither the organizers of the charter, nor any member of the chartering organization, may receive any gratuities or compensation, direct or indirect, from the carrier, the travel agent, or any organization which provides any service to the chartering organization whether of an air transportation nature or otherwise. Nothing in this section shall preclude a member of a chartering organization who is the carrier's agent from receiving a commission from the carrier (within the limits of section 295.15), or prevent any member of the charter group from accepting such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, a canvas traveling bag or a money exchange computer).

(d) If the total expenditures, including among other items compensation to members of the chartering organization, referred to in § 295.33(c) above, but exclusive of expenses for air transportation or land tours, exceed $750 per round-trip flight, such expenditures shall be supported by properly authenticated vouchers to be given to the carrier with the "Post Flight Report" required pursuant to § 295.34.

§ 295.34 *Statements of charges.*

(a) Any announcements or statements by the charterer to prospective charter participants of the anticipated in-

dividual charge for the charter shall clearly identify the portion of the charges to be separately paid for the air transportation, for the land tour, and for the administrative expenses of the charterer.

(b) Within 15 days after completion of each one-way or round-trip flight the charterer shall complete and supply to each charter participant and the air carrier involved a detailed report showing the charge per passenger transported and the charterer's total receipts and expenditures. The report shall be submitted in the form of, and contain such information including the above as more fully specified by, the "Transatlantic Charter—Post Flight Report" annexed hereto and made a part of this regulation.

§ 295.35 *Passenger manifests.*

(a) Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of the persons to be transported and specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described). The manifest may include "stand-by" participants (by name, address and relationship to charterer).

20664

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger manifest as follows:

(1) A *bona fide* member of the chartering organization at the time the organization first gave notice to its members of firm charter plans and will have been a *bona fide*

member of the chartering organization for at least six months prior to the starting flight date. Specify on the passenger manifest as "(1) member."

(2) The spouse, dependent child or parent of a *bona fide* member who lives in such member's household. Specify on the passenger manifest as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) *Bona fide* members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver. Specify on the passenger manifest as "(3) special" or "(3) member" (where participants are from a study or campus group or from a Government agency, industrial plant or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the eastbound and westbound trips must be explained on the manifest.

(d) Attached to such manifest must be a *certification,* signed by a duly authorized representative of the charterer, reading:

"The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a *bona fide* member of the chartering organization at the time

the chartering organization first gave notice to its members of firm charter plans, and will have been a member for at least six months prior to the starting flight date, or (2) is a *bona fide* member of an entity consisting of (a) students and educational staff of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such per-

20665

son's household, or (5) is a *bona fide* participant in a charter composed of participants in a formal academic study course abroad.

(Signature) ."

---

§ 295.36 *Statement of supporting information.* Charterers shall execute and furnish to air carriers Section B of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

SUBPART B—PROVISIONS RELATING TO SINGLE ENTITY CHARTERS

§ 295.39 *Applicability of subpart.* This subpart sets forth the special rules applicable to single entity charters.

§ 295.40 *Tariffs to be on file.* The provisions of § 295.13 shall apply to charters under this subpart.

(20665, 20666)

§ 295.41 *Terms of service.*

(a) The total charter price and other terms of service shall conform to those set forth in the applicable tariff filed in accordance herewith and the contract shall be for the entire capacity or one-half the capacity of one or more aircraft.

(b) The terms of service prescribed in § 295.14(b), (c) and (d) shall be applicable in the case of single entity charters.

§ 295.42 *Commissions paid to travel agents.* No direct air carrier shall pay a travel agent any commission in excess of five percent of the total charter price or more than the commission related to charter flights paid to an agent by a carrier certificated to fly the same route, whichever is greater.

SUBPART C—PROVISIONS RELATING TO MIXED CHARTERS

§ 295.50 *Applicable rules.* The rules set forth in Subpart A hereof shall apply in the case of mixed charters.

SUBPART D—PROCEDURE FOR ADVISORY OPINION ON THE ELIGIBILITY OF A CHARTERER

§ 295.60 *Advisory opinion.* An air carrier or prospective charterer may request an advisory opinion from the Bureau of Economic Regulation, Civil Aeronautics Board, Washington, D. C. 20428, regarding the eligibility of the prospec-

tive charterer to obtain charter service in accordance with this regulation. The Bureau's opinion will be based on the

representations submitted and shall not be binding upon the Board in any proceeding in which the lawfulness of the respective charter may be in issue. Such representations should include as much of the information specified by Section B, Part II, of the Statement of Supporting Information as is available to the person requesting the advisory opinion.

Note: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Members GURNEY and GILLILLAND dissented.

(20667)

20667

STATEMENT OF SUPPORTING INFORMATION *

PART I—To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter contract, clearly indicate applicability of answers.)

1. Name of transporting carrier: .....
2. Commencement date(s) of proposed flight(s):
   (a) Going .....
   (b) Returning .....
3. Points to be included in proposed flight(s):
   (a) From ..... to .....
   (b) Returning from ..... to .....
   (c) Other stops required by charterer: .....
   (d) Technical stops required by carrier: .....
   (e) Planned routing: .....
   .....
4. (a) Type of aircraft to be used: .....
   (b) Seating capacity: .....
   (c) Number of persons to be transported: .....
5. (a) Total charter price: .....

* This must be retained by the air carrier for two years pursuant to the requirements of Part 249, but open to Board inspection, and to be filed with the Board on demand.

(b) Does the charter price conform to tariff on file with the Board? .....

(c) If pro rata or mixed charter, explain construction of charter price in relation to tariff on file with the Board (In case of mileage tariff, show mileage for each segment involved and indicate whether segment is live or ferry). .....

.....

20668

6. (a) Has the carrier paid, or does it contemplate the payment of any commissions, direct or indirect; in connection with the proposed flight? Yes ☐ No ☐

(b) If "yes," give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 5 percent of the total charter price, attach a statement justifying the higher amount under this regulation.

.....

.....

7. (a) Will the carrier or any affiliate provide any services or perform any functions in addition to the actual air transportation? Yes ☐ No ☐

(b) If "yes," describe services or functions: .....

.....

.....

8. Name and address of charterer: .....

(20668, 20669)

9. If charter is single entity, indicate purpose of flight:

.....

10. On what date was the charter contract executed?

.....

11. If the charter is pro rata, has a copy of Part 295 of the Civil Aeronautics Board's Economic Regulations been mailed to or delivered to the prospective charterer? Yes ☐ No ☐

20669

PART II—To be completed for pro rata or mixed charters only:

Section A—To be supplied by travel agent, or, where none, by the air carrier or an affiliate under its control where either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including land tour arrangements).

1. What specific services have been or will be provided by agent to charterer on a group basis? .....

.....

.....

2. What specific services have been or will be provided by agent to individual participants in the proposed charter? .....

.....

.....

3. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any member of the chartering organiza-

tion in relation either to the proposed charter flight or any land tour? Yes ☐ No ☐

4. Does the agent have any financial interest in any organization rendering services to the chartering organization? Yes ☐ No ☐ If answer is "yes," explain:

.....

.....

Verification[1]

STATE OF .....)
COUNTY OF .....) SS:

....., being duly sworn,
Name
deposes and says that to the best of his knowledge and belief all the information presented in Part II, Section A of this Statement is true and correct.

.....
Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Sworn to before me this day,
the ..... of ....., 19

20670

.....
(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

(20670)

Warranty

I, ..., represent and
Name
warrant that I have acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section A) and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.

.....
Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Section B—To be supplied by charterer:

1. Description of chartering organization, including its objectives and purposes: .....
.....
.....

2. What activities are sponsored by the chartering organization? .....
.....

3. When was the organization founded? .....

4. Qualification or requirements for membership in organization and membership fee, if any: .....

.....

5. Has there been any reference to prospective charter flights in soliciting new members for the chartering organization? Yes ☐ No ☐

20671

6. If total membership in the chartering organization is less than 1,000, submit list showing names and addresses of members in good standing.[2] If total membership in the chartering organization is 1,000 or more, state where a list of members is available for inspection.

.....

.....

7. Attach list of prospective passengers, showing for each: Name, address, and whether a member of chartering organization or relationship to a member of chartering group. (Note: This is a list of prospective passengers and does not necessarily have to represent the passengers actually carried.)

8. Purpose of trip: .....

.....

9. What are requirements for participation in charter?

.....

10. How were prospective participants for charter solicited (attach any solicitation material?) .....

.....

11. Will there be any participants in the charter flight *other than* (1) members of the chartering organization

(20671, 20672)

or (2) spouse, dependent children, and parents of a member of the chartering group, *residing in the same household with the member?* Yes ☐ No ☐

12. Will there be any members of the chartering organization participating in the charter who will have been members of the organization for a period of less than six months prior to flight date?[2] Yes ☐ No ☐ If answer is "yes," give names of participants who will not have been members for six months and justify (see §295.2 (k)):

.....

.....

.....

20672

13. If there is any intermediary involved in the charter, other than the travel agent whose participation is described in Part II, Section A, submit name, address, remuneration and scope of activity:

.....

.....

14. Estimated receipts:

..... × ..... = $.....

(Pro rata charge) (no. of passengers) (Estimated receipts from charter)

Estimated receipts from other sources, if any: .....

Explain: .....

....

(a) Total receipts $

Estimated expenditures, including aircraft charter (separately itemize air transportation, land tour, and administrative expenses):

Item	*Amount*	*Payable To*

(b) Total expenditures $

Explain any difference between (a) and (b): .....

.....

15. Are any of the expenses included in Item 14, above, to be paid to any members of the chartering organization? Yes ☐ No ☐ If "yes," state how much, to whom and for what services:

.....

.....

20673

16. Is any member of the chartering organization to receive any compensation or benefit directly or indirectly from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip? Yes ☐ No ☐ If "yes," explain fully:

.....

.....

17. Will any person in the group (except children under two years) be transported without charge?
Yes ☐ No ☐

18. Will charter costs be divided equally among charter participants, except to the extent that a lesser charge

(20673, 20674)

is made for children under twelve years old?
Yes ☐ No ☐

19. Separately state for the outbound and inbound flights the number of one-way passengers anticipated to be transported in each direction:

.....

.....

20. If more than one round trip is contracted for, will each group move as a unit in both directions? Yes ☐ No ☐

.....

21. If transatlantic charters have been performed for organization during past 5 years, give dates and name of carrier performing charters:

.....

.....

22. Has a copy of Part 295, "Transatlantic Supplemental Air Transportation," Economic Regulations of the Civil Aeronautics Board been received by the charterer? Yes ☐ No ☐

20674

Verification of Charterer[1]

STATE OF .....)
COUNTY OF .....) ss:

..... and
(name)

.....
(name)

being duly sworn, hereby separately depose and say that to the best of the knowledge and belief of each of them all

the information in Part II, Section B, of this Statement is true and correct.

.....	.....
(Signature and title of officer—This should be the chief officer of the chartering organization except in the case of a school charter, in which case the verification *must* be by a school official not directly involved in charter.)	(Signature—person within organization in charge of charter arrangements.)
Sworn to before me this day, the ..... of ....., 19	Sworn to before me this day, the ..... of ....., 19
.....	.....
(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)	(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)
(SEAL)	(SEAL)

20675

Warranty of Charterer

I, ... and
(name)

.....
(name)

represent and warrant that the charterer has acted with regard to this charter operation (except to the extent fully

(20675)

and specifically explained in Part II, Section B), and will act with regard to such operation, in a manner consistent with Part 295 of the Board's Economic Regulations.

.....	.....
(Signature and title of officer—This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty *must* be by a school official not directly involved in charter.)	(Signature—person within organization in charge of charter arrangements.)

Verification of Employer[1]

(To be furnished where eligibility to participate in charter is dependent upon employment by a particular entity.)

STATE OF .....)
COUNTY OF .....) SS:

....., being duly sworn,
(name)

deposes and says that to the best of his knowledge and belief solicitation for this charter has been confined to persons employed by .....,
(name of employer entity)

or persons in the immediate families of such employees.

.....
(Signature and title of authorized official of employer)

Sworn to before me this day, the ..... of ....., 19

.....

(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

20676

Warranty of Air Carrier

To the best of my knowledge and belief all the information presented in this statement, including but not limited to, those parts verified by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.[3]

.....

(Signature and title of authorized official of air carrier)

---

[1] Whoever, having taken an oath before a competent — person — that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. *Title 18, U. S. C., §1621.*

[2] Not applicable to college campus or study-group charters, nor to charters limited to employees of a single Government agency, industrial plant or mercantile company.

[3] Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to

(20677)

20677

TRANSATLANTIC CHARTER POST FLIGHT REPORT

Instructions:

The charterer shall complete and file a report in this form with the air carrier within 15 days of each one-way or round-trip charter flight. A report in this form shall also be furnished each charter participant by the charterer within 15 days after completion of each one-way or round-trip charter flight.

1. Name of carrier: .....

2. Name of chartering organization: .....
.....

3. Analysis of charterer's receipts:

(a) ..... × ..... = ...
No. of one-way psgrs. | Charge per psgr.[1] (including amounts later refunded)

(b) ..... × ..... = ...
No. of round-trip psgrs. | Charge per psgr.[1] (including amounts later refunded)

(c) Receipts from other sources (explain) = ...

(d) Total receipts [(a) + (b) + (c)] = ...

---

keep or preserve accounts, records and memoranda in the form and manner prescribed by the Board, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record or memorandum, shall be guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000. *Title 49, U. S. C., §1472.*

4. Analysis of charterer's expenditures:

Item of expenditure[2]	*Paid to*[3]	*Amount*
	Total[4]	

20678

Verification[1]

STATE OF .....)
COUNTY OF .....) SS:

I, ..., being duly sworn, hereby depose and say that this report has been prepared by me or under my direction, that I have carefully examined it and that to the best of my knowledge and belief it is a complete and accurate statement, and a copy hereof has been distributed to each charter participant.

.....
(Signature of person in charge of charter arrangements)

Sworn to before me this day,
the ..... of ....., 19

.....
(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

[1] If charter cost was not divided equally among *all* participants actually transported, indicate clearly the individual amounts collected and the number of passengers paying each such amount.

[2] As a separate item there should be listed here a total of all the amounts refunded to the charter participants; also list separately

(20679)

20679

Appendix A

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket 11908 *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

Decided: October 8, 1963

Certificates issued to Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc., for supplemental air transportation of persons and their personal baggage between points in the 48 contiguous States on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia, as far east

---

air transportation, land tour, and administrative expenses, and break down administrative expenses so as to show such items as postage and printing, and to show compensation for labor and personal expenses paid to any member of chartering organization.

[3] Disclose any relationship to chartering organization.

[4] If this item does not agree with item 3(d), submit an explanatory statement as to the reasons therefor. If the total expenditures (including among other items compensation to members of the chartering organization but exclusive of expenses for air transportation or land tours) exceed $750 per round trip, such expenditures shall be fully supported by vouchers submitted to and retained by the direct air carrier operating the charter. Such vouchers must cover all expenditures made on behalf of the chartering group including any expenditures for banquets, gifts, local transit, etc.

as (and including) India, on the other hand, for a five-year period, subject to the terms, conditions, and limitations of Part 295.

Part 295 of the Economic Regulations revised and reissued (1) to redefine "charter flight" to allow the engagement by the chartering organization of one-half the capacity of an aircraft on a time, mileage, or trip basis, (2) to eliminate the 20,000 membership limit on *bona fide* chartering organizations, (3) to remove existing restrictions on travel agents assisting in the formation of charter groups, handling the sale of air transportation to members of the group, engaging in the administration of a charter flight, soliciting individuals for land tours and receiving a commission for a charter flight or land tour if the agent is a member of the chartering organization, (4) to require the chartering organization to maintain central membership lists containing the date each member joined the organization, and to make such lists available to both the carrier and the Board, and (5) to incorporate the provisions of Sec. 399.41 with respect to liability insurance, substitute air transportation and incidental expenses on the return portion of the charter flight.

APPEARANCES:

Same as in the Recommended Decision and, in addition, the following:

Louis S. Papa for Airline Transport Carriers, Inc. d/b/a California Hawaiian Airlines.

David I. Shapiro for U. S. Overseas Airlines.

Leo M. Hydeman for Seaboard World Airlines.

20680

OPINION

By Boyd, Chairman:

This proceeding was instituted by the Board to determine whether the public convenience and necessity require the certification of one or more air carriers to conduct transatlantic passenger charters between points within the 48 contiguous states, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia as far east as (and including) India, on the other hand, and, if so, which carrier or carriers should be selected and under what terms and conditions, including the suitability of Part 295 for a long-range charter program.[1] Proposals for changes in Part 295 to permit (1) charters by travel agents for all-expense group tours and (2) "split charters" to so-called "affinity" and "spontaneous" groups, were specifically declared to be within the issues of the proceeding.[2]

Nine carriers holding some form of authority for supplemental operations,[3] one whose authority for such operations

---

[1] Orders E-16023, November 14, 1960, and E-17190, July 18, 1961.

[2] Orders E-17607, October 18, 1961, and E-18121, March 19, 1962.

[3] Capitol Airways, Inc. (Capitol), Overseas National Airways, Inc., (ONA), Saturn Airways, Inc. (Saturn), World Airways, Inc. (World), Modern Air Transport, Inc. (Modern), U. S. Overseas Airlines, Inc. (USOA), Quaker City Airways, Inc. d/b/a Admiral Airways, Inc. (Quaker City), Airline Transport Carriers, Inc. d/b/a California Hawaiian Airlines (ATC), and Paramount Airlines, Inc. (Paramount).

had been revoked,[4] and three all-cargo carriers,[5] prosecuted their applications for certificates.[6]

20681

After due notice a public hearing was held before Examiner James S. Keith, who thereafter issued his recommended decision. Subsequent to the close of the hearing, but prior to the time the examiner rendered his decision, Public Law 87-528, the so-called supplemental air carrier legislation, was enacted and became effective July 10, 1962.[7] The examiner found that transatlantic passenger charter services by United States carriers other than Pan American and TWA would serve a useful public purpose responsive to a public need, and recommended that such services be continued. He recommended that six carriers other

[4] Great Lakes Airlines, Inc. (Great Lakes).

[5] The Flying Tiger Line Inc. (Flying Tiger), Riddle Airlines, Inc. (Riddle), and Seaboard World Airlines, Inc. (Seaboard).

[6] Of the various applications consolidated in this proceeding (see Orders E-16023, E-17190 and E-17607) all except the thirteen indicated were withdrawn or dismissed for lack of prosecution, E-17607, October 18, 1961, E-17725, November 15, 1961, E-17865, December 22, 1961, E-17938, January 18, 1962, and E-18319, May 9, 1962.

[7] In a series of decisions dated October 5, 1962, subsequent to the examiner's recommended decision, ATC, Quaker City and Paramount were denied interim authority under section 7 of P. L. 87-528 to engage in "supplemental air transportation" as defined in said law. Their applications under the newly added section 401 (d) (3) of the Act for more permanent authority to engage in such transportation, together with like applications of Capitol, ONA, Saturn, World, Modern and USOA, all of whom were granted interim certificates under section 7, are pending. Great Lakes was not an applicant for an interim certificate and did not file for a section 401 (d) (3) certificate. The nine carriers who are applicants for 401 (d) (3) certificates are hereinafter sometimes collectively referred to as "the supplemental carriers."

than Pan American and TWA be authorized to engage in transatlantic passenger charter service; that the all-cargo carrier applicants be permitted to continue their transatlantic passenger charter services under a revised Part 207, and their applications for certificates to conduct such

20682

services be dismissed;[8] that Capitol, Saturn and ONA be given temporary certification to September 30, 1963, under the newly added section 401(d)(3) of the Act to engage in transatlantic supplemental air transportation pending final decision in the present proceeding; that the other supplemental carriers who are applicants not be so temporarily certificated; that final decision on the applications of all the supplemental carriers be deferred pending decision on their applications under section 401(d)(3); that the application of Great Lakes be denied; that the concept of charter not be expanded to include either all-expense tour charters by travel agents or split charters and that Part 295 be otherwise revised in accordance with a draft attached to the recommended decision.

---

[8] The examiner recognized that amendment of Part 207 was not in issue, but recommended, in view of the unusual situation created by the enactment of P. L. 87-528 (having reference to section 401(e)(6), the so-called "Engle Amendment," added to the Federal Aviation Act as part of such legislation), that the Board initiate steps to revise Part 207 so as to remove the existing restrictions therein on the certificated all-cargo carriers and empower them to engage in off-route passenger charters under terms, conditions, and limitations corresponding with those set forth in a revised Part 295 as recommended by him. The examiner further noted that since, under such a revised Part 207, Slick Airways, Inc. might decide to engage in transatlantic passenger charters, thus making four all-cargo carrier participants, there would be need for only two transatlantic charter carriers to be certificated from the class of supplemental carriers.

Exceptions to the recommended decision and briefs to the Board have been filed.[9] The Board has heard oral argument and the case stands submitted for decision.

Upon consideration of the entire record and the contentions of parties, we find that we are in agreement with the examiner's conclusions that transatlantic charter services by carriers other than the certificated passenger airlines would serve a useful purpose and would not adversely affect the operations of TWA and Pan American or otherwise be contrary to the public interest. However, we do not agree that the transatlantic charter market requires the services of six carriers, or that the public interest requires that the all-

cargo applicants be empowered to continue transatlantic charter services. Rather, we are of the opinion that the certification of the three supplemental air carriers selected by the examiner, Capitol, Saturn, and ONA, for a period of five years will fill the demonstrated needs of the transatlantic charter market. We have also concluded, contrary to the examiner, that the definition of charter in Part 295 of the Economic Regulations should be amended to allow the carriage of two charter groups on any one aircraft, rather than restricting the carriers to full plane-load charters. We agree with the other revisions of Part 295 recommended by the

[9] Exceptions and briefs to the Board were filed by Pan American, TWA, American Society of Travel Agents (ASTA), Flying Tiger, Riddle, Seaboard, Great Lakes, Bureau Counsel, Capitol, ONA, Saturn, World, Modern and Quaker City. We hereby grant the motions of Modern and Quaker City—to which no answers were filed—requesting acceptance of their exceptions which were filed one day late. USOA filed exceptions and a letter adopting its brief to the examiner in lieu of a brief to the Board. ATC and Paramount filed exceptions, but no briefs to the Board.

examiner, except that, in addition thereto, we will require the maintenance by chartering organizations of central membership lists, containing the date each member joined the organization, which list should be available to both the carriers and the Board. Except as modified herein, we adopt as our own the findings and conclusions of the examiner in his recommended decision which is attached hereto as Appendix A.

Necessity for Certification

The examiner has reviewed the characteristics and growth pattern of the transatlantic charter market which led him to the conclusion that continuation of transatlantic charter service by carriers other than the certificated route passenger carriers is required, and we need not repeat those details here. Historically, the Board has sought to encourage the development of the large mass international travel market in the United States without undue diversion from the regular route carriers. In furtherance of this objective, the Board has in the past authorized, by exemption procedures,

a variety of supplemental and all-cargo operators[10] to conduct transatlantic charter flights during the peak summer season. Such authorizations have had two major effects. Because of the substantial difference in price between carriage on a pro rata charter and on individually ticketed service, transatlantic air transportation was made available to and used by a part of the potential market which otherwise could not have afforded transatlantic air travel; in turn, the

[10] Hereinafter referred to as the "Part 295 operators" or "Part 295 carriers."

presence of this group of operators stimulated the IATA carriers to expand their own charter programs.[11] Secondly, the availability of charters was increased during the peak summer season, when the U. S. flag carriers, because it is also the peak season for individually ticketed travel, could not satisfy the demands of the transatlantic charter market. The extent of participation in the transatlantic charter market which the Part 295 carriers have achieved indicates the existence of a continuing need for such low-cost services,[12] and we think it now appropriate to designate a number of these carriers to perform such services on a certificated basis.

The gist of the scheduled route carriers' case in opposition to certification is that the IATA group fares for the North Atlantic market, instituted in 1962, have now removed any need for certificated charter carriers, since group

20685

fares make available to the public air transportation at fares only slightly higher than the cost of a pro rata charter, on scheduled services using jet equipment and with a wide choice of dates and departure time. It is their position that the availability of group fares will substantially diminish the transatlantic charter market and that the remaining demand for charters can be adequately met by the IATA car-

[11] Until the Board authorized the entry of such carriers into the charter market, it was virtually impossible for chartering groups to obtain charters during the peak season.

[12] In 1962, 11.4 percent of transatlantic passengers traveled on charter; Part 295 carriers carried 26 percent of them, or 48,827 passengers, while U. S. certificated route carriers carried 17,791 or 10 percent. The remaining charter traffic was carried by foreign air carriers.

riers. However, as the examiner pointed out, certain aspects of group fares prevent them from becoming a replacement for charters. Group fares on jet aircraft, which carry the largest part of group fare passengers, are sufficiently higher than pro rata charter fares (about $55) to make a substantial difference for family groups, which make up a significant part of charter travel. Furthermore, during the peak summer season, group fares are not available for weekend travel,[13] a restriction which the evidence indicates, renders group fare travel less attractive to many groups. Additionally, group fares are not available for travel from or to off-group points and off-route groups who wish to utilize such fares must undergo the inconvenience of a change in plane. The group fare discount itself is applicable only to transatlantic mileage and thus passengers from on-line points other than New York and Boston would not receive the benefit of the group fare discount for their entire journey.

20686

That the advent of group fares has not eliminated the demand or need for transatlantic charter service is demonstrated by the fact that in 1962, in spite of the fact that group fares were in effect for the summer season, transatlantic charters increased by almost 10 percent over the previous year, when group fares were not in effect. Charter traffic carried by the Part 295 carriers alone increased by more than 10,000 passengers. The charters performed

[13] Under the 1963 IATA agreement, group fares would also be unavailable during the last week in June and the first week in July eastbound and the last week in August and first week in September westbound, the peak travel weeks.

by Pan American and TWA themselves decreased from 293 in 1961 to 202 in 1962, while the Part 295 carriers increased from 371 to 474 one-way charters.[14] This experience in the 1962 season refutes the certificated route carriers' contention that the charter market remaining after the advent of group fares can be served by the IATA carriers alone. The argument is made, however, that the 1962 charter statistics are not an accurate indication of the effect group fares will have on the future charter market, because the group fare resolution was not adopted until February 1962, long after many charterers had already made firm travel plans, and not approved by the Board until mid-April, too late to allow adequate 1962 promotion and to allow group development by the potential traveler. However, we do not think that the lateness of group fare approval sufficiently accounts for the substantial increase in transatlantic charter traffic in 1962,[15] particularly in view

of the various drawbacks of group fare travel *vis-a-vis* charter travel noted by the examiner.

Nor does the record support the route carriers' assertion that the IATA carriers alone can satisfy the demands of the transatlantic charter market. That assertion is, of course, predicated on the assumption that the charter market will be considerably diminished by the impact of group fares, which assumption has not been proven true to date.

---

[14] Foreign air carriers performed 1,113 one-way charters in 1962 as compared with 1,057 in 1961.

[15] 1962 economy class transatlantic travel also showed a great increase—47 percent—over 1961, and accounted for 81.3 percent of transatlantic passengers, facts which may well be a reflection of the effect of group fares on the market.

The record indicates that the scheduled route carriers' interest lies, understandably, in switching prospective charters to group fares. If successful, it would seem unlikely that such carriers would retain the equipment and interest necessary to meet the demands of the charter market. In 1962, charters performed by the U. S. certificated carriers declined to 202 (of which TWA performed only 5) from the 293 performed in 1961; they carried some 8,000 less passengers in 1962, and their share of the charter market declined from 16 percent to 10 percent. These figures hardly indicate an active interest in charter traffic. Furthermore, whatever the impact of group fares on the charter market, the fact that the IATA carriers may have unused capacity over a whole season does not mean that they could meet the entire need for charter service. The transatlantic charter market is characterized by brief but intense periods of demand, which coincide with the peak periods for scheduled transatlantic traffic. Thus, ability to serve the market at issue depends not merely on total seats available over the

season, but on availability of sufficient equipment and personnel at the times when chartering organizations wish to travel. The record is, we find, barren of evidence that Pan American and TWA can, and will, by themselves meet the peculiar demands of the existing and future transatlantic charter market.

We believe, moreover, that the conduct of charter services by a group of certificated specialists should be of substantial benefit in maintaining and/or increasing low cost services in the transatlantic market. The adoption of the IATA group fares was, in some measure at least, instigated by

the availability of transatlantic charters by Part 295 carriers, and their continuation is dependent upon the concerted action of the IATA carriers. The certification of transatlantic charter specialists should not only provide a stimulus to the IATA carriers to develop a fare structure directed at developing a mass market; such certification will help to assure the continued provision of low cost air transportation in the seasonal transatlantic market, whatever course scheduled individually ticketed fares should take.

We are not convinced that the certification of carriers to perform transatlantic charter services will result in any significant diversion of traffic from the U. S. flag carriers.

20689

The latter carriers impliedly conceded that the charter operations of the Part 295 carriers were not in any marked degree diversionary before the adoption of the IATA group fares, as they carried traffic that would otherwise not have traveled except for the low cost of the charter and Pan American and TWA were unable to meet the demand for such charters with their own equipment. Since the adoption of group fares, they argue, any Part 295 charter passenger must now be diverted from their own scheduled services at such group fares or from their own charter services. However, as we have noted *supra,* in view of the drawbacks of group fares for certain traffic, the remaining price differential, and the probable inability of the route carriers to fill the existing demand for charters, charter services by other than the scheduled route carriers should continue to be largely nondiversionary.[16] It is notable that

[16] The diversionary effect of the authorization of split charters is discussed *infra.*

in 1962 when both IATA group fares and charters by both IATA and Part 295 carriers were available, economy fare passengers (of which group fare passengers are a part) increased far more than any kind of charter passengers. In any case, even if Pan American and TWA were able themselves to carry all the transatlantic passengers presently handled by all of the applicants herein, the amount of traffic lost to them by the presence of these Part 295 carriers in the market has not been shown to be of such magnitude

as to affect their financial position. In 1962, when the charter traffic carried by the Part 295 operators had increased some 31 percent over the previous year, such operators still carried only 3 percent of the total transatlantic passenger traffic. While it is argued that the financial posture of Pan American and TWA is such that any diversion would be harmful,[17] we require some showing beyond general argument, of substantial damage from such operations before depriving the public of needed low-cost services. Accordingly, in view of all of the foregoing, we agree with the examiner that the public convenience and necessity require the authorization of one or more of the applicants herein to engage in transatlantic charter service.

Selection of Carriers

Having determined the need for certification of one or more of the applicants herein, the question arises as to which applicant or applicants should be selected. The examiner recommended that six of the carrier applicants be

[17] The improvement in the financial and traffic position of Pan American and TWA in 1962 is noted *infra*.

permitted to conduct transatlantic charter services. This conclusion appears to have rested primarily on his belief that such services should be an incidental activity of the chosen carriers rather than an operation conducted by specialists. Since an average of six to eight carriers have his-

torically handled Part 295 charters, with six carrying all but an inconsequential part of the business, he found that six carriers could adequately serve that portion of the transatlantic charter market previously served by the Part 295 carriers. He rejected the Bureau's position that only three carriers should be authorized on the grounds that (1) in view of the noncompetitive nature of the services to be authorized herein, there would be no need for strong charter competitors as urged by the Bureau, and (2) the uncertainties as to the ability of any carrier to obtain regularly the westbound cargo charters or military contracts needed for profitable operations to offset the directional imbalance of the passenger charter market could materially reduce the transatlantic charter services if only three carriers were authorized. The authorization of a larger number of carriers would, he found, minimize this situation and guarantee a more constant level of service. He then determined that the all-cargo carriers should be permitted to continue their transatlantic charter operations, not by certification herein, but by an appropriate regulation, (*i.e.*, amendment of Part 207) since these carriers now possess the statutory right under section 401(e)(6) of the Act to engage in off-route passenger charters.

As to the remaining applicants, the examiner recommended that Capitol, Saturn and ONA, the only supplementals with transatlantic charter contracts for 1962, be permitted to continue temporarily their activities in this area pending final decision in this case, which, he stated, should be deferred until the Board has determined the scope of other supplemental air services which it will authorize the applicants[18] to perform pursuant to their pending applications for permanent supplemental authority under section 401(d)(3) of the Act.

In our judgment, contrary to the examiner, the number of applicants to be authorized herein should be sufficiently restricted so as to afford the carriers selected the greatest possible opportunity to conduct profitable operations consistent with the needs of the traveling public for transatlantic charter services. Otherwise, it appears unlikely that the selected applicants will be able to make the investment in personnel and equipment necessary to perform such operations adequately. The proper conduct of transatlantic charter operations requires experienced personnel, and such personnel, and the expertise that goes with it, are more likely to be developed by carriers with a continuing interest and identity in the market, in contrast to the sporadic operations which have characterized the Part 295 carriers in the past. Additionally, the carriers selected will need to acquire

[18] Excepting Great Lakes, which is not an applicant for a certificate under section 401(d)(3). Lacking any other air carrier authority, or the possibility thereof, the examiner would deny Great Lakes' application outright.

jet equipment if they are to maintain their competitive position *vis-a-vis* the IATA carriers, and to continue participation in military charter business,[19] which, for most of the applicants, constitutes an important source of revenue. If each share of the market is diluted too much by the authorization of a large number of applicants, the financing of such equipment would be exceedingly difficult. Furthermore, historically speaking, the *three* most active carriers, rather than six, have operated the great majority of Part 295 charters; in the period from 1957 through 1962, three carriers performed an overall average of 83 percent of the Part 295 services.

On the other hand, as the examiner has pointed out, the transatlantic charter market is highly seasonal, marked by brief but intense periods of demand; it also has a directional imbalance. In these circumstances no single applicant herein would have the equipment and personnel to meet the demands of this market and still be able to conduct other services; nor could any carrier survive on this business alone. Clearly, the transatlantic charter market cannot be adequately served by only one carrier.

Accordingly, we are of the opinion that the requirements of the transatlantic charter market will be adequately met by the certification of three carriers to perform such services.

We further conclude that the carriers certificated for transatlantic charter service should be selected from among

[19] As of fiscal 1964, the Department of Defense policy will be to use turbine-powered equipment exclusively for MATS movements, except in areas where economically or operationally infeasible.

the supplemental air carriers rather than the all-cargo carriers. The examiner, as we have heretofore noted, gave the cargo carriers the primary position among the applicants, by reason of their historical interest in the market, their greater stability and market identification, need for charter revenues and the fact that they now possess a statutory right to conduct off-route charters under new section 401(e)(6) of the Act, the so-called Engle Amendment, contained in P. L. 87-528.

At the outset, we wish to make clear that in our view it was not the Congressional intent in the Engle Amendment to give the all-cargo carriers any favored position with respect to transatlantic passenger charters. On the contrary, the House Conference Committee report shows that the purpose of the amendment was to put authority for the all-cargo carriers to conduct passenger charters,[20] if granted by the Board, on a statutory basis, rather than under a strained interpretation of the Board's exemption powers. Thus the report stated (108 Congressional Record, pp. 11242-3):

> "... the committee of conference wishes to state that it does not intend that this amendment be interpreted as a directive that the Board should necessarily grant the cargo carriers that either any greater or lesser authority than the Board has, in practice, given them under section 416. The scope of such authority is a matter for the Board to determine. The intention is only

[20] The Board has since construed *all* passenger charters conducted by all-cargo carriers as off-route. Regulation ER-375, March 26, 1963.

to insist that the Board act under specific statutory authority and not under a strained interpretation of a provision not contemplated by Congress. This amendment will permit the Board to authorize cargo carriers to engage in passenger charter operations to the extent that it may find, from time to time, that the public interest so requires."

20695

Although we are not required by anything in the Act to give first consideration to the all-cargo carriers for transatlantic charter authorization, we are aware that those carriers have had historical participation in the market, greater market identification and stability than the supplementals, and that transatlantic charter revenues have been of benefit to them in supporting their scheduled operations.

The historical interest in the market is almost solely that of one carrier, Flying Tiger, rather than the cargo carriers as a class. Of the 720 transatlantic charters performed by the all-cargo carriers in the period 1957-1962, 472 were operated by Flying Tiger, 191 by Riddle, 19 by Seaboard and 38 by Slick, which is not an applicant herein. Even Flying Tiger's participation has been somewhat erratic; in 1959 and 1960, it operated only 12 and 21 charters, respectively.

We are influenced to select supplementals exclusively, rather than all-cargo carriers, by the fact that P. L. 87-528 has restricted the field of activity for supplemental carriers, except for the short interim period provided by section 7 of that law, to charter operations. Thus, so long as national policy, as expressed in the recent legislation, favors the continuation of supplemental carriers as a class, we be-

lieve that such carriers should be given the opportunity to develop one of the few civilian markets left to them. In addition to assisting the chosen supplementals to achieve economically sound operation, the certification of such carriers would, we think, better serve the public interest than the selection of the all-cargo carriers, or division of the market between them, in that the interest of the supplementals in the development of the transatlantic charter market would necessarily be greater, since their field of activity is now confined to charter operations.

We recognize the validity of the point made by the examiner that transatlantic passenger charter revenues should, if such charters are operated efficiently, have a beneficial effect on the over-all operations of the all-cargo carriers.[21] Riddle has in the past had more or less consistent serious financial difficulties and was denied a special order pursuant to §207.13 of Part 207 of the Economic Regulations for permission to provide transatlantic passenger charter services during the summer season.[22] In the 1962 season, although it had contracts for 226 transatlantic passenger charters (R. D. 49), it was able to perform only 129 and had to subcontract the rest. Further, although Flying Tiger and Seaboard indicated that each carrier anticipated that it could operate profitably in 1963 without the help of trans-

[21] He found that the record shows such charters to have been financially beneficial to Flying Tiger, and adds that they "could also prove advantageous to the other all-cargo carriers."

[22] Order E-19659, June 11, 1963.

atlantic charter revenue,[23] the recent reports filed by those carriers raise doubts as to the profitability of their operations for the year. However, even though the data before us tend to indicate that the cargo carriers need any available revenues, the same is true of the supplemental carriers. We do not consider that the need of the cargo carriers for revenues outweighs the public interest in assisting the selected supplemental carriers to achieve economic success by making available one of the few civilian markets remaining open to them.

Seaboard, both in its exceptions and brief and in a motion to dismiss all applications herein or, in the alternative, to stay all procedural steps, contends that the enactment of P. L. 87-528 has made this proceeding moot and precludes the Board from certificating either supplemental carriers or all-cargo carriers herein. With respect to the supplementals, the carrier's position is that since the passage of P. L. 87-528, the exclusive statutory basis for granting certificate authority to supplemental carriers is now section 401(d)(3) of the Act. Since the instant investigation was instituted prior to the enactment of the above law, and at a time when certificates of public convenience and necessity could be issued only pursuant to section 401(d)(1) and (2), which are no longer applicable to supplementals, the record cannot support the grant of a certificate under section 401 (d)(3). It is alleged that none of the evidence presented

[23] Tr. 963, 1142-4; Exh, SW-4A. Each carrier has been awarded a substantial contract with the Defense Establishment for fiscal 1963. For the year 1962, Seaboard indicated on its Form 41 reports that it had realized a net profit of $868,142, while Flying Tiger earned $2,810,932 in net income for the year.

was directed to the new statutory criteria, in particular to limitations necessary to confine the services to be rendered

20698

to supplemental air transportation as defined in the Act, under section 401(d)(3), and that the examiner failed to make findings or insert limitations in the recommended certificates in compliance with the section.[24]

Seaboard's position can be supported, in our opinion, only by taking an over-technical view of the relationship of P. L. 87-528 and the record developed herein. While it is true that the issues as framed when this investigation was started did not specifically include the limitations issue for supplemental certification introduced by P. L. 87-528, the order of investigation included not only the issue of whether certificated transatlantic charter services were required by the public convenience and necessity, but also the issue of the terms, conditions, and limitations that should be attached to any certificates that might be issued, and contemplated a comprehensive investigation into all aspects of the transatlantic charter problem, including the rules that should govern any transatlantic charter services that might be found to be required. The record is replete with evidence which would support findings on any limitations issue; the question of the possible amendment of Part 295, which regulation embodies the terms and conditions under which transatlantic passenger charter services supplemental to those of the scheduled route carriers are conducted, was thoroughly explored and the examiner made findings thereon. Seaboard does not set out, and we are unable to ascertain in what other respect the section 401(d)(1) stand-

[24] Riddle also takes this position in its brief.

ards and section 401(d)(3) standards for certification are not identical; nor has Seaboard specified or shown in what particulars the record before us is insufficient to enable us to award authority in this proceeding subject to the provisions of sections 401(d)(3) and 401(n) of the Act and in conformity with P. L. 87-528.

Seaboard also argues that if the Board makes a determination herein respecting the place of the supplemental carriers in the transatlantic passenger charter market, it will be rendering a decision on basic policy questions which will necessarily serve as precedent in the proceedings under section 401(d)(3). Since the record did not focus on such questions, it is contended, this docket should not be utilized for such a purpose; indeed, it cannot be without prejudice to carriers who are not parties hereto, but who have a vital interest in being heard on such issues. Seaboard's argument is not persuasive. The detailed record in this proceeding respecting the need for charter services in this particular market, the impact of such services on the scheduled route operators, and the qualifications of the various supplemental applicants was compiled with participation of all the interested parties and forms a better basis for the determination of what carriers should be certificated to provide supplemental service in the transatlantic passenger market than a broader supplemental certification proceeding. Any general questions concerning "broad issues" which carriers not parties hereto wish to raise in the section 401(d)(3) proceedings will be considered therein on their merits, and without prejudice occasioned by the particular circumstances of this case.[25]

[25] There is nothing in P. L. 87-528 or the legislative history leading thereto which would indicate that the Congress intended that no supplemental authority should be granted in this proceeding.

Similarly, we reject Seaboard's contention that Congress did not intend that the Board issue section 401(d)(3) certificates during the transitional period covered by interim authority granted by the Board under sections 7 and 9 of P. L. 87-528.[26] No provision of that statute is cited to support this argument, nor is any reference made to the legislative history.[27]

Seaboard also contends that the all-cargo carriers' applications, including its own, should be dismissed. Its own application, in its view, is now moot by reason of amended section 401(e)(6) of the Act, which, it contends, establishes Seaboard's right to perform passenger charters over its cargo route stemming from its certificate of public convenience and necessity. This same amendment, Seaboard asserts, authorized other all-cargo carriers, by implication, to conduct passenger charters in the transatlantic market on an off-route basis. Thus, Seaboard argues, certification under sections 401(d)(1) and (2) is no longer necessary to authorize passenger charter service by all-cargo carriers, Congress intending the Engle Amendment to be the exclusive avenue of authority for the performance of such services of all-cargo operators, subject to the restrictions of Part 207 of the Board's Economic Regulations.

---

[26] Riddle makes a similar argument.

[27] The fact that no interim transatlantic passenger charter authority has been granted under section 7 of P. L. 87-528 is of no significance, since the Board expressly reserved decision thereon for this case (Order E-18868, October 5, 1962), and, furthermore, such operations have historically been conducted under Part 295 and its predecessors rather than pursuant to supplemental air carrier authority, upon which the scope of interim authority was predicated.

We have previously concluded that *all* passenger charters conducted by all-cargo carriers are off-route (see Regula-

20701

tion ER-375, March 26, 1963 and Order E-19602, May 22, 1963), and we here reaffirm that conclusion. Further, as we have indicated *supra,* the Engle Amendment was not intended to give the all-cargo carriers, a favored position in the transatlantic passenger charter market, but was intended merely to give a statutory basis for such operations to the extent that the Board might determine the services were required under the standards of the Act. This being so, we can find no basis for not disposing of the certificate applications of the cargo carriers herein. Further, we are satisfied that the Board can proceed to issue certificates for supplemental transatlantic charter transportation to supplemental air carrier applicants here and can later, through appropriate rule-making procedures, amend Part 207 in any manner that may be required by the public interest in the light of the certificate authority granted to the supplemental carriers herein.

Having determined that the public convenience and necessity require the certification of supplemental, rather than all-cargo carriers, to provide the needed transatlantic passenger charter service, we further find that Capitol, Saturn and ONA are the supplementals best qualified to perform such service.

In selecting the carriers to serve the transatlantic charter market, we are, as always, required to make a comparative evaluation of the several applicants' qualifications. However, because of the peculiar nature of the proposed services and the kind of applicants, the factors of importance

are somewhat different from those in the usual route case. Whereas such factors as beyond segment benefits and integration with existing routes normally weigh heavily in our determination, here, where none of the supplementals have authority to perform regular scheduled route operations,

20702

and will have no authority to perform any individually ticketed services after the interim period expires, such factors are of little, if any, weight. On the other hand, past experience with the operation of this market indicates that such factors as previous transatlantic charter activity and experience, availability of equipment, disposition to comply with the Act and the Board's rules and regulations thereunder and financial posture and prospects[28] should be significant in the selection of carriers to perform the proposed services. There has been considerable turnover in the carriers participating in the transatlantic charter market; at the same time, passengers have been subject to delays, strandings and other inconveniences. We think these facts demonstrate that historical experience in serving this particular market, with the expertise which that engenders, and financial stability and resources are the factors of primary importance here. In addition, not only does historical participation connote expertise and interest in the market but the participating carriers have earned revenues therefrom of which they should not be deprived without strong reason.

From the viewpoint of previous charter experience and historical participation in the transatlantic charter market, Capitol and ONA are outstanding among the supplemental

[28] We recognize that these are also aspects of the carriers' fitness, willingness and ability under section 401(d)(3).

applicants, having performed 313 and 200 such charter flights respectively in the period 1957 through 1962. The next largest participant among the applicant supplementals was Saturn, with 56 charter flights in that period. Of the re-

maining seven supplemental applicants, four (World, Modern, Quaker City and Paramount) have never performed any transatlantic passenger charters and Great Lakes performed only one, in 1957.[29] ATC and USOA performed 45 and 46 such charters respectively in the period 1957-1962; however, neither performed any in the year 1962.

From the financial standpoint, Capitol, ONA and Saturn merit preference over the other supplemental applicants. Since the record in this proceeding was compiled, a thorough examination of the financial qualifications of the various supplementals, based on more recent data, was made by the Board in connection with the granting of interim operating authority. All of the supplemental applicants herein were applicants then. Of the supplementals who have participated in the transatlantic charter market in previous years, only Capitol, ONA, Saturn and USOA were found to be financially qualified to perform supplemental air trans-

---

[29] In any event Great Lakes is disqualified for certification by its lack of compliance disposition (see 294 F. 2d 217 (D. C. Cir., 1961), *cert. den.*, 366 U. S. 965 (1961) and 291 F. 2d 354 (9th Cir., 1961), *cert. den.*, 368 U. S. 890, *reh. den.*, 368 U. S. 336 (1961)) which goes to fitness, willingness and ability to perform the transportation and the fact that it has no interim supplemental authority, MATS contracts, nor is it an applicant for permanent supplemental authority, some of which would be necessary to enable it financially to conduct transatlantic charter operations on a sustained basis.

portation.[30] ATC was denied interim authority[31] and thus is currently disabled from performing charter (or individual) operations as a common carrier. Since that time, the Board has had occasion to re-examine the financial qualifications of those carriers to operate in the transatlantic

20704

charter market itself in determining applications for amendments to interim operating certificates to conduct such charters during the 1963 season. Again, the Board found Capitol, ONA and Saturn to be in an adequate financial position to undertake such operations.[32] However, it found that the deterioration of USOA's financial condition and its prospects placed it below the standard of fitness required for proper conduct of a transatlantic passenger charter program.[33] As of February 28, 1963, its net worth had decreased to negative $1,401,000, and overall financial condition deteriorated $533,000 from its condition as of the date interim operating authority was granted. Furthermore, the carrier did not have all necessary MATS clearances for performance of MATS operations and its prospects in that report were regarded as a matter of speculation. Under these circumstances, we are constrained to exclude USOA from certification in this proceeding in the absence of any advantages

---

[30] Orders E-18871, E-18867, E-18868, and E-18884, October 5, 1962.

[31] Order E-18866, October 5, 1962.

[32] Orders E-19612, May 24, 1963, E-19632, June 3, 1963 and E-19635, June 5, 1963.

[33] Orders E-19589, May 16, 1963 and E-19648, June 7, 1963.

which would result from its authorization substantial enough to overcome these deficiencies.

As we have noted, *supra*, questions of experience, financial posture, compliance disposition and equipment availability go to the issue of fitness, willingness and ability properly to perform the supplemental air transportation under consideration in compliance with the Act and the rules, regulations and requirements of the Board thereunder, and our foregoing findings in these respects are per-

20705

tinent to the latter issue. As we have seen, Capitol, ONA and Saturn have all had experience in performing transatlantic charters, Capitol and ONA in particular having engaged extensively in transatlantic passenger charter operations. Each carrier has adequate equipment to perform such services[34] and, as the record indicates, has sufficient personnel available to conduct transatlantic charters without inconvenience to the traveling public.[35] Furthermore the record indicates that the three carriers selected are fit, will-

[34] Capitol has one Constellation and 16 Super Constellations; ONA operates 7 DC-7 aircraft and Saturn operates 3 DC-7 aircraft.

[35] Although it has been suggested that some of the supplementals, including those selected, presently do not necessarily have substantial enough overseas organizations to provide reliable service, but rather handle overseas services by contract arrangements, it is expected that certification of a small number of carriers will enable them to expand their overseas facilities and generally to concentrate on the development of service in the transatlantic charter market. It has also been intimated that the fluctuation in their numbers of employees suggests that such carriers operate with only casual personnel; however, we do not find this to be established and, in any event, would expect supplemental carriers, from the nature of their business, to have some fluctuation in the level of employment.

ing and able to conform to the Act and the Board's rules and regulations thereunder from a compliance standpoint. Neither Saturn nor ONA has ever been the subject of a Board cease and desist order or, as far as it appears, violated the Act. While Capitol has in the past been charged with violations of the Act, such violations were limited in number, and, when viewed with its whole compliance record, do not indicate either a predisposition to violate the law, or unwillingness to conform to the law in the future.[36]

20706

The Board has already, as noted, found the three carriers financially fit to operate a Part 295 transatlantic charter program for the 1963 season, as well as to receive interim operating authority pending disposition of their applications for permanent authority under section 401(d)(3). Since receiving authority to operate during the 1963 transatlantic charter season, Capitol's negative net worth noted by the Board at that time has now become a positive figure. Saturn continues to have a positive net worth, although it has suffered a net loss for the year to date, and ONA's financial situation has not changed sufficiently to lead us to conclude that it does not have the financial resources to conduct supplemental services in the transatlantic passenger market. It should be borne in mind that both Capitol and ONA have withstood substantial losses in earlier years, at the same time developing a considerable market in transatlantic charters. Saturn has built up its participation in the market in a relatively short time. We consider the ability to serve and promote a market in spite of financial

[36] See Order E-18871, October 5, 1962.

handicaps to be more indicative of fitness than month-by-month balance sheets. Accordingly, in view of all the foregoing, we find Capitol, ONA and Saturn fit, willing and able to provide air transportation in the transatlantic passenger charter market in conformance with the Act and the Board's rules and regulations thereunder.

20707

Terms and Conditions

The examiner recommended that the supplementals which he selected should be given only temporary transatlantic charter authority which should not extend beyond the 1963 charter season, and that final decision on *all* the applications of supplementals be deferred until the Board has determined the scope of other supplemental air services which may be authorized pursuant to applications for permanent authority under section 401(d)(3). His reasons for this restriction were that any carrier authorized to conduct transatlantic charters must have some other basic year-round operation on which to attach such incidental or subordinate authority and that the scope and tenure of the supplementals' permanent section 401(d)(3) authority, which is not yet known, has an important bearing on the comparative qualifications of such carriers. From the same premises, the Bureau recommended that the three supplementals should be certificated in this proceeding for a period of five years, with a condition that the certificates should provide for automatic termination in the event permanent supplemental authority is denied these carriers. While we agree that revenues from the conduct of some other operations are desirable and probably necessary for the holders

of transatlantic charter authority, we do not find the limitations suggested by either the examiner or bureau counsel necessary. All three selected supplementals have been granted interim operating authority pending disposition of their applications for permanent supplemental certification. Providing for only temporary seasonal authority or for

20708

automatic termination upon denial of their permanent applications would be small improvement over their prior status in terms of long range planning, would very likely decrease the chosen carriers' incentive to develop transatlantic charter traffic and make more difficult their problems of obtaining new equipment and adequate financing. In the event that one or more of the three carriers is denied permanent certification in the section 401(d)(3) proceedings, we can at that time take such steps as are deemed appropriate with respect to transatlantic charter authority. Accordingly, we shall award Capitol, ONA and Saturn certificates of five years' duration.

Amendments to Part 295

As defined in the initial orders in this investigation,[37] the issues in this proceeding comprehend rule-making as well as licensing. The Board stated that it contemplated a full consideration of the rules which should govern any operations certificated herein including further consideration of rules established by the then recent amendment of Part 295 and invited the applicants and all parties not only to offer any suggestions which they might have with regard

[37] Orders E-16023, November 14, 1960 and E-17190, July 18, 1961.

to the suitability of the rules or Part 295 for a long range program, but also to come forward with any new concepts which they may consider appropriate. Numerous proposals regarding the amendment of Part 295 were presented to the examiner and debated by the parties.

20709

Two major innovations in Part 295 have been proposed by the applicants. The first is the redefinition of the term "charter flight" (which is now defined in terms of the entire capacity of one or more aircraft), to permit certificated transatlantic charter operators to carry less than planeload, or "split" charters.[38] The second, also strongly advocated by ASTA, is the modification of the present restrictions on travel agents in Part 295 so as to permit them to charter aircraft for the movement of groups on all-expense paid tours organized and publicly solicited by them.

The examiner rejected both of the above proposed revisions on the ground that while their adoption would increase the potential utility of transatlantic charter services it would be contrary to the public interest since such an expansion would have severe competitive implications, exposing traffic of Pan American and TWA to diversion at a time when their transatlantic services are experiencing serious economic problems. He found, however, that the operation of split charters unaccompanied by all-expense tour authority would not seem to carry any unusual competitive implications if the applicants used piston-engine

[38] All the applicants except USOA proposed that their charter authority be extended to groups of 25 persons or more (20 in the case of Great Lakes) and that "spontaneous" as well as "affinity" groups be declared eligible, as those groups are defined in the IATA agreements.

aircraft as against the jets of the scheduled route carriers at only moderate fare differentials. Even with the operation of large jet split charters, which he considered more diversionary, the diversion from group fare traffic would,

he concluded, be scattered among the IATA carriers and the portion diverted from Pan American and TWA would not be unduly great. Pan American, he thought, could probably absorb the diversion without any noticeable effect upon its transatlantic operations, while it would be more harmful to TWA in view of the substantial operating losses from its transatlantic services between 1958 and 1961.

All-expense tour charters, the examiner concluded, would have much more drastic diversionary effects than would split charter authority, exposing to diversion the substantial volume of historical all-expense tour business carried by Pan American and TWA (13 percent of its economy fare passengers in the case of Pan American, $12.5 million 1961 revenues for TWA). Since a large part of such traffic is promoted and sold by travel agents, agents offering all-expense groups tours on flights they have committed themselves to charter will logically channel their group tour traffic to such charter flights in order to preserve their investments in organization and promotion. Taking the two proposals together, the examiner found they would have serious competitive implications, which might be overlooked in the interest of developing new areas of air travel if the transatlantic services of the U. S. flag carriers were in a state of normalcy.

Upon consideration of the record and the arguments of the various parties both supporting and opposing these

two proposed revisions, we find ourselves in agreement with the examiner's rejection of the proposed authorization of all-expense tour charters. On the other hand, we find that

20711

it is in the public interest to amend Part 295 to permit the chartering of one half the capacity of any given aircraft to one group and the chartering of the capacity of the other half of the aircraft to a second group. Each of the two groups will be required to meet the eligibility requirements of the regulation.

The record herein supports the position of the applicants that the present restriction of Part 295 to planeload charters operates to deprive many smaller *bona fide* organizations of the opportunity to participate in transatlantic charter travel because of inability to fill an entire chartered aircraft.[39] As equipment used in the transatlantic charter market becomes larger, this situation will be aggravated and more and more would-be chartering organizations will be excluded by the mere size of the aircraft. Groups of a size which, a few years ago, could fill aircraft then being used in the transatlantic charter market now could utilize only half the space in the intercontinental jets coming into use in this market. While the advent of group fares on the flag carriers may be, to some extent, an alternative lower cost form of air transportation, we have noted the drawbacks of group fares as opposed to charters, and we are unwilling to withhold from this part of the potential air transportation market the advantage of transatlantic charters solely because of increases in the size of equipment.

[39] Exhs. J-A, pp. 1-2, CAP-T-1, p. 4; FTL-25, Tr. 1074-5.

It does not appear to us that the relaxing of the plane-load charter requirement to allow carriage of two rather than only one charter group on a single aircraft will have diversionary consequences sufficient to offset the above-noted benefits resulting from such authorization. In the first place, because of the disadvantages of group fares *vis-a-vis* charters, which we have referred to *supra*, p. 6, charter flights whether of whole or half-a-plane capacity should largely serve traffic which would otherwise be unreached by the scheduled carriers. Secondly, as we will permit no more than two groups in an aircraft, such split charters would involve groups of at least 40 passengers, assuming the use of the same type of piston equipment currently in use in the transatlantic charter market. Such charters would not be competitive for groups of 25 permitted group fare savings on IATA carriers' scheduled services. If jet equipment is used, the disparity in numbers would be even greater and the probability of diversion even less.

Thirdly, we agree with the examiner that the diversionary effect, if any, of split charters will be distributed among the various IATA carriers and not necessarily concentrated upon Pan American and TWA. In any event, the financial position of TWA, with which the examiner was chiefly concerned, has changed considerably for the better since 1961, the period referred to in the recommended decision. Its international operations for the year 1962 showed an operating profit of $15 million and a net profit of almost $7 million, as contrasted with a loss of $13 million in 1961.[40]

[40] Passenger revenues (scheduled) increased in 1962 by $15 million; transatlantic passengers increased by one-third or 68,870 passengers. Pan American's traffic in the transatlantic market increased by 11.2 percent, or about 45,000 passengers.

20713

Pan American's operating profit in its Atlantic Division also increased by $8 million in 1962 over 1961, to $12,488,604, while its net profit increased almost $2 million to $6,671,342. In light of the 1962 figures, it cannot be concluded that the minimal amount of diversion which can be anticipated from the possible offering of charter space to two groups on any one plane by the carriers herein selected to provide transatlantic charter service will seriously affect the transatlantic operations of either TWA or Pan American.[41]

Amendment of Part 295 to allow chartering of an aircraft by travel agents for all-expense tours would, on the other hand, have more serious consequences for the scheduled transatlantic route carriers. As the examiner pointed out, a significant portion of their traffic and revenue is derived from economy fare passengers on all-expense tours sold by travel agents. Since members of the public as such cannot be solicited for group fares, the fare differential between an all-expense tour via an IATA carrier and via a Part 295 charter would be based on the regular economy fare. The price differential between these two fares (about $200 for a New York-London round trip) would, in our opinion, increase the diversion potential to a degree not warranted by the attendant benefits of allowing such charters at the present time.

20714

The scheduled route carriers participating in this proceeding contend that the Board is precluded, as a matter of

[41] The most recent reports filed by both carriers show still further improvement for 1963 operations.

law, from authorizing the carriage of less than planeload charters. Their argument is that (1) heretofore, the Board has accorded the term "charter trip" the meaning of a flight involving a contract for the entire capacity of an aircraft and (2) the legislative history of P. L. 87-528 makes it clear that Congress intended that the word "charter" used therein should have its traditional meaning and intended *not* to permit the authorization of split charters thereunder.

The term "charter" appears twice in the Federal Aviation Act: in section 101(3), added by P. L. 87-528, defining supplemental air transportation as "charter trips" pursuant to a certificate granted for that purpose, and in section 401(e)(6) which authorizes off-route "charter trips and other special services" by regular route operators. Nowhere in the Act is the term "charter" defined.

The Board has hitherto, in pertinent regulations and matters before it, restricted permissible charter transportation to the engagement of the entire capacity of an aircraft for transportation on a time, mileage or trip basis.[42] However, it has nowhere taken the view that a whole planeload lease is the *only* arrangement that could qualify as a

charter within the meaning of the Act.[43] The past limita-

---

[42] See, *e.g.*, Parts 207, 212 and 295 of the Economic Regulations, and *Charter Flight Tariff Investigation*, 15 C. A. B. 921 (1952).

[43] In DR 42, January 11, 1950, the Notice of Proposed Rule Making by which notice was given of the Board's consideration of the original issuance and draft of Part 207, governing charters of certificated carriers, the Board, in its explanatory statement, said:

"The definitions of 'charter trip' and 'special service' (substantially the same as the 'entire capacity' definition of Part 295)

tion to planeload charters has been based primarily on policy considerations arising out of enforcement problems anticipated as resulting from other configurations and the lack, heretofore, of any showing of a substantial *need* for charters of less than planeload capacity,[44] rather than on any presumed lack of power to construe the term "charter" otherwise. Our primary concern has been with retaining what we consider to be the significant element of "charter" air transportation—not any innate requirement of a planeload lease, but the distinction between group carriage as opposed to the carriage of individually ticketed

20716

passengers drawn from the general public.[45] It is this distinction which must be maintained in order to justify the

---

contained in §207.1 of the new part have been made solely for the purpose of establishing the scope of permissible operations of this character, and not with the idea of attempting to define the meaning of these terms as used in §401(f) of the Act."

And in *Seaboard & Western A. L., Inc., Enforcement Proceeding*, Order E-17920, January 9, 1962, the Board stated:

"We think it clear on the basis of Board precedent that in *the absence of specific authorization* * * * a 'charter' does not carry with it the authority to combine loads or transport commercial 'fill-up traffic'." (emphasis supplied)

[44] *Foreign Off-Route Charter Service*, 27 C. A. B. 196 (1958), *ACTA-IMATA Commercial Charter Exchange Investigation*, 22 C. A. B. 760, 768-9 (1955); *Large Irregular Air Carrier Investigation*, 22 C. A. B. 838 (1955). Thus in the latter decision, the Board remarked (pp. 864-5):

"While the examiners would permit charters of one-half of a plane's capacity, we do not find from the record a substantial need for charters of less than planeload capacity, and we can see little purpose to be served by such an authorization."

[45] *Foreign Off-Route Charter Service*, 27 C. A. B. 196, 201 (1958); *Large Irregular Air Carrier Investigation*, 22 C. A. B. 838,

lower charter rates resulting from economies connected with handling groups rather than individually ticketed traffic.

Thus, at least as of the date when P. L. 87-528 was enacted, the Board was not by reason of anything in the commonly accepted definition of charter or statutory restriction lacking in power to authorize the performance of charters of less than planeload capacity.[46] While the Board has so limited its approval, it does not regard itself as foreclosed by its construction of the term "charter" from authorizing less than planeload charters if the public interest justifies such action.

In our judgment, the legislative history of P. L. 87-528 confirms the view that the Board has discretion to construe the undefined term "charter services" in consonance with the whole purpose of the Act. The original Senate bill, S. 1969, contained a definition of charter service which would have restricted it to air transportation where the entire capacity of one or more aircraft has been engaged, but would have allowed the chartering of such capacity to travel agents for operation of all-expense tours. The House bills which were considered, on the other hand, left the term "charter" undefined. The House Committee, in one of its reports, explained that it had been concluded that

20717

"authority to define charter services should be left, as at present, with the Board, subject to the limitations

[46] Neither the legislative history of original section 401(e)(6) nor that of section 208(c) of the Motor Carrier Act from which it was derived indicates any Congressional intent to limit the term "charters" to the exclusive use of a plane or motor vehicle.

contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications." [47]

In conference, the Senate conferees receded from their position and the House version prevailed. The bill which was presented by the conference committee to both houses (and which was ultimately enacted) left the term "charter" undefined, and the reports of the conference committee made no reference to the problem. Against this background, we conclude that the law deliberately left with the Board authority to define "charter services."

The Board is aware that during the debates on the bill following conference, various Senators and Congressmen, who were also conferees, expressed divergent views on this question, with some indicating that the Board's authority to authorize charter service was intended to be limited to charters coming within the definitions presently embodied in the Board's regulations. However, these remarks[48] of individual members do not, in our opinion, affect the fact that as reported (and enacted), the law contained no definition of charter and placed no strictures or conditions

on the Board respecting its construction. Further, the statement of Senator Monroney, a manager for the Senate and Chairman of the Senate Subcommittee on Aviation,

[47] H. Rept. No. 1177 on H. R. 7318, 87th Cong., 1st Sess., p. 11.

[48] These statements basically reflect the concern of the legislators in maintaining the distinction between group and individual carriage.

affirms our view. He said, referring to the elimination of the charter definition contained in the Senate bill:

> "The charter definition would have operated to prohibit the granting of split charters—that is, the transportation of more than one charter group in a single aircraft. We felt that the Board should be left free to determine on its merits the desirability of permitting the supplemental carriers to conduct such charters, in view of the fact that the charter business will ultimately represent the only source of revenue for these carriers. Another reason why we desire to leave the Board sufficient flexibility so that it might permit split charters was the effort of the Defense Department to encourage these carriers to acquire modern turbine-powered equipment for the civil reserve air fleet. The size of such aircraft makes it virtually impossible to find a charter group sufficiently large to fill an entire aircraft." [49]

Accordingly, the bill which was enacted as P. L. 87-528 left the term "charter" again undefined and subject to Board construction appropriate to the regulatory scheme of the

Act,[50] and we find no need to go beyond the legislative enactment to ascertain the extent of our latitude in construing

[49] 108 Cong. Rec. 11425.

[50] Congressional reenactment of certain language has been held not necessarily to mean that prior administrative construction has become so embedded in the law that only Congress can effect a change, and a change in administrative interpretation, operating prospectively after Congressional reenactment has been held valid. *Commissioner of Int. Rev.* v. *Air Reduction Co.*, 130 F. 2d 415 (2 Cir., 1942).

the statutory term "charter." As Justice Jackson stated, in his concurring opinion in *Schwegmann Bros.* v. *Calvert Corp.*, 341 U. S. 384, 396 (1951):

> "* * * The Rules of the House and Senate, with the sanction of the Constitution, require three readings of an Act in each House before final enactment. That is intended, I take it, to make sure that each House knows what it is passing and passes what it wants, and that what is enacted was formally reduced to writing. It is the business of Congress to sum up its own debates in its legislation. Moreover, it is only the words of the bill that have presidential approval, where that approval is given. It is not to be supposed that, in signing a bill, the President endorses the whole Congressional Record."

As we have indicated, the significant element of the charter concept is the maintenance of a distinction between group and individually ticketed travel. Split charters, restricted as they will be to one-half the capacity of an aircraft, and surrounded by the limitations embodied in Part 295, do no inherent violence to this essential distinction. We have noted the changed conditions in size of equipment prevailing today over the period when the charter regulation was first adopted. To adhere to a restriction to plane-load charters in the face of such changed conditions would be to ignore economic facts in favor of a sterile, and dubious conceptual rigidity.[51]

---

[51] We are not constrained to hold otherwise by the fact that the Interstate Commerce Commission, under the sections of the Motor Carrier Act which served as prototypes of section 401(e)(6) of the Federal Aviation Act, has by regulation and case law required that

The examiner, although he rejected the proposed revisions of Part 295 to allow split charters or all-expense tours, recommended that the regulation be amended in several other important particulars, to wit: (1) the limitation (§295.30) on the size of eligible chartering organizations to a maximum of 20,000 members (except colleges or universities located in one local area) should be deleted, (2) the prohibitions against travel agents assisting in the formation of charter groups, handling the sale of air transportation to members of the group, engaging in the administration of charter flights, soliciting individuals for land tours and receiving commissions (contained in §§295.20, 295.21, 295.22, 295.23 and 295.24) should be removed. In these recommendations, we concur.

The limitation on size of the chartering organization was intended to prevent diversion from scheduled service, on the theory that large organizations are almost indistinguishable from the general public. However, we are of the opinion that at this juncture the six-month membership requirement of section 295.30[52] reinforced, as it will be,

---

exclusive use of a vehicle be engaged by a single charterer. The difference in size of a bus which accommodates at the most 40 passengers and a modern jet aircraft capable of carrying 165 passengers is obvious. In any event, regulatory concepts under the Interstate Commerce Acts are not to be imported uncritically into the Aviation Act. *C. & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103 (1948); *Las Vegas Hacienda, Inc.* v. *C. A. B.*, 298 F. 2d 497 (9th Cir., 1962).

[52] Since the examiner issued his recommended decision, the Board by Reg. ER-382, May 23, 1963 exempted business entities and government organizations from the limitation and eliminated the "local area" limitation applied to colleges and universities.

by mandatory maintenance of membership lists, constitutes a sufficiently substantial restriction of charter flights to the general public so as to render the numerical limitation unnecessary. The record indicates that the present effect of this requirement is largely to foreclose *bona fide* organ-

20721

izations from engaging in charter programs; no evidence has been presented to demonstrate any real diversionary danger from removal of this restriction. The lifting of this limitation should, in our view, increase the availability of low-cost transportation and, in the absence of any adverse effect upon scheduled services, is consistent with the public interest.[53]

With respect to the elimination of the aforementioned restrictions on the activities of travel agents, the examiner has fully and adequately discussed the reasons for such elimination. We believe that allowing travel agents greater freedom in these respects will enable the further development of charter travel by organizations now unable or unwilling to organize their own programs. With the certification of only three carriers, any enforcement problems resulting from the lifting of these restrictions should be minimal.

However, we will also adopt a new provision to be added to Part 295, as recommended by bureau counsel, to assist in the enforcement of the six-month membership requirement of section 295.2(k) requiring that each chartering organization maintain a central membership list containing

[53] The Board has required the IATA carriers to eliminate this restriction in the group fare resolution for 1963. Orders E-19294, February 12, 1963 and E-19385, March 18, 1963.

the date each member joined the organization, and that this list should be available to both the carrier performing the charter flight and the Board. This provision will aid

20722

the Board and the carrier in determining whether participants in a pro rata charter are *bona fide* members of a group eligible to charter, as distinguished from the general public. There is no indication that such a requirement will impose a serious burden on any *bona fide* organization.[54]

The examiner properly recommended that the requirements contained in Policy Statement No. 13 (now Policy Statement No. 17, Sec. 399.41 of Part 399 of the Board's Regulations) respecting liability insurance, substitute air transportation and incidental expenses on the return portion of a transatlantic charter flight, should be incorporated in Part 295. Bureau counsel now suggests that these provisions should be modified to reflect the equivalent requirements of current Part 208 of the Board's Economic Regulations. We are, however, satisfied that for the most part the special requirements of Policy Statement No. 17, which pertains solely to transatlantic charters, are more appropriate for inclusion in Part 295 than the somewhat more stringent provisions of Part 208 (except insofar as the Part 208 insurance requirements are now incorporated by reference into Policy Statement No. 17). We will, however, incorporate the provisions of §208.21 of Part 208, limiting the subcontracting of charters to carriers authorized

[54] The fact that such a requirement is not now imposed in connection with the IATA carriers' group fares does not preclude us from imposing it here.

by the Board to perform such services. No other revisions of Part 295 were proposed to us that were not effectively considered, and disposed of, by the examiner.

Finally, we find, in accordance with the provisions of section 4(a) of the Administrative Procedure Act, that notice and public procedure on the regulations we are

adopting are unnecessary and would be contrary to the public interest. As we have noted, the orders delineating the issues of this proceeding (which were published in the Federal Register) made clear that the amendment of Part 295 was one of the subjects of investigation. All interested parties were given notice and have had an opportunity to present whatever suggestions they deemed appropriate respecting the amendment of Part 295, and to comment on the positions of other parties. The examiner attached to his recommended decision an amended Part 295 based on the current regulation, but modified to the extent he deemed called for by the evidence and briefs of parties. Although the regulation we are reissuing differs in some of its provisions from the regulation proposed by the parties and/or the examiner, all of the provisions were either taken from the existing regulation or Policy Statement 17, or their substance was the subject of intensive examination and argument by the parties. Under these circumstances, it is clear that public rule-making procedures are not required in fairness to any person and that to follow those procedures would only result in further delay, contrary to the public interest, in making effective the authorizations we have determined to grant. We will, therefore, adopt the amended Part 295 at this time and provide that it shall

become effective on the effective date of the certificates to be issued herein.[55]

We have considered the remaining contentions of the parties and their exceptions to the recommended decision and find that, except to the extent indicated herein, they should not alter the results we have reached.

20724

Accordingly, in view of the foregoing and all the facts of record, we find that the public convenience and necessity require:

That certificates be issued to Capitol, Saturn and ONA, authorizing the supplemental air transportation of persons and their personal baggage between points in the 48 contiguous states of the United States of America on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India on the other hand, for a period of five years, subject to the terms, conditions and limitations prescribed in Part 295 of the Board's Economic Regulations, which is attached hereto and made a part hereof, and to such other reasonable terms, conditions and limitations required by the public interest as may from time to time be prescribed by the Board.

We further find:

1. That Capitol, Saturn and ONA are each citizens of the United States within the meaning of the Act, and are

[55] The certificates will contain an effective date of 60 days after approval by the President.

fit, willing and able properly to perform the supplemental air transportation hereinabove authorized to be performed by each of them and to conform to the provisions of the Act and the rules, regulations and requirements of the Board thereunder.

2. That the public interest requires that Part 295 of the Economic Regulations should be revised and reissued, in the form attached hereto as Appendix B, concurrently herewith, effective on the effective date of the certificates to be issued herewith.

20725

3. That, except to the extent otherwise indicated, all applications, motions and requests involved in this proceeding should be denied.

4. That this investigation should be terminated.

Appropriate orders will be entered.

MURPHY, Vice Chairman and MINETTI, Member, concurred in the above opinion. GURNEY and GILLILLAND, Members, filed the attached joint dissenting opinion.

20726

GURNEY and GILLILLAND, Members, Dissenting:

The record before us fails to establish that the public convenience and necessity require the certification of any of the applicants for transatlantic charter authority. Further, in our judgment, the basic concept of charter service should not be expanded to include split charters.

The transatlantic market is saturated with the competitive services of 19 carriers at all price levels including charter. The Board, however, has found a need for additional charter services based upon the alleged growth in

the charter market. Significantly, the route carriers in 1962 carried 74 percent of the charter passengers. The fact that the Part 295 carriers carried the remaining percentage does not show a need. It only shows a participation and diversion from the route carriers.

As a result of the intense North Atlantic competition the past operations of the U. S. Flag carriers, Pan American and TWA, have been but marginally successful. In 1961 Pan American's return on investment on its North Atlantic operations was only 4.31 percent and TWA incurred a loss of $13,711,000 on its international operations. During the past eleven years, TWA's international services have resulted in a net loss and Pan American's return has been but moderate.[1] The foreign flag carriers have also suffered losses. SAS reported an $18 million loss

for the year ended September 30, 1961, Air France a loss of $10 million, and KLM a loss of $21 million for the calendar year 1961. BOAC recently announced a loss of over $40 million for the year ending March 31, 1962.

The certification of three more carriers in the North Atlantic market may produce additional international problems, and may tend to restrict the charter operations of all our carriers by foreign governments. On the other hand it is a precedent for the establishment of new foreign charter carriers in this market already saturated with multitype services and fares.

---

[1] Revenues of both carriers increased in 1962 and profits were reported; however, the earnings over the long term are the yardstick by which their operations should be judged. *General Passenger Fare Investigation*, Order E-16068, November 25, 1960, pp. 70-71.

The charter concept should not be expanded to include split charters. Such authority will result in further diversion and deterioration of the financial condition of the route carriers. Split charter authority is not in the public interest and we concur with both the Examiner and Bureau Counsel on this issue.

It is alleged that split charters are required for the small groups who are unable to provide sufficient number of persons to fill large jet aircraft and to provide a competitive tool for the IATA group fares. There is no evidence that any substantial number of groups have been unable to charter aircraft because of the size of the plane. If some groups are insufficiently large to warrant the full capacity of the aircraft, the group fares of the IATA carriers are available.

The Board's position with regard to the Part 295 carriers and the charter market was made very clear in Order E-18224, April 26, 1962, when the group fare was approved. In that approval, the Board stated:

> ". . . The economic health of the United States certificated transatlantic carriers is a matter of prime concern to the Board in the public interest. These carriers are required by their certificates of public convenience and necessity to perform regularly scheduled transportation for the general public in good years as well as bad years, in the off season as well as the peak season, and over their thin 'national interest' routes as well as the lush North Atlantic. Their need for the assistance which the group fares will provide is established. On the other hand, the Part 295 carriers have

(20728, 20729)

no obligation to serve the North Atlantic, and may and do move in and out of the market at will. Their participation in the total market is extremely small. Moreover, it has not been shown that the impact on them will be critical. Under these circumstances we could not disapprove the proposal in order to protect the Part 295 carriers from a potential loss of revenue." (Mimeo pp. 14-15)

The word "charter" as used with regard to transportation has customarily been considered to contemplate the hire of an entire vessel or vehicle. The Board's definition of "charter" in Part 207 of the Economic Regulations retained this interpretation.[2] The Interstate Commerce Commission has defined the word "charter" in the same manner. (See, *Crescent Express Lines* v. *United States*, 320 U. S. 401 (1946).)

In Public Law 87-528 the term "charter" is undefined. However, language in the debates on the Bill in both the House and the Senate indicate an understanding of the Board's definition of "charter trips" which would not include "split charters" or all-expense tours. Congressman Harris, Chairman of the House Interstate and Foreign Commerce Committee, and a Manager on the Part of the House on Public Law 87-528, stated:

20729

"A charter in the aviation field has always meant the engagement of the entire capacity of the aircraft for

[2] Also see Parts 212 and 295 of the Economic Regulations and *Charter Flight Tariff Investigation*, 15 C. A. B. 921 (1952).

a particular purpose by a single engaging party." (108 Cong. Rec. 11461)

Congressman Williams, Chairman of the Subcommittee on Transportation and Aeronautics of the House Interstate and Foreign Commerce Committee and one of the Managers on the Part of the House, stated:

> "So, there is no statutory definition of 'charter' in the bill. That definition will be the one which is presently in effect under a regulation of the Civil Aeronautics Board."

These views were concurred in by Senator Scott (108 Cong. Rec. 11427) and Senator Thurmond (108 Cong. Rec. 11427), Members of the Senate Commerce Committee.

For these reasons we would deny the split charters.

/s/ CHAN GURNEY
/s/ WHITNEY GILLILLAND

20730

APPENDIX A

(To Board's decision of October 8, 1963)

Docket 11908 *et al.*

The examiner's recommended decision referred to herein is not attached to this copy because of the wide circulation given at the time of its release. The recommended decision is attached to the original of the Board's opinion and to the official copies in the Board's files and may be examined there. It will also be printed as part of the official "Civil Aeronautics Board Reports."

(20731)

20731

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 8th day of October, 1963

Docket 11908 *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc.;

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on .....;

3. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied;

4. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

Approved:

.....

.....

(20732)

20732

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

OVERSEAS NATIONAL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supple-

mental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed

transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the

(20733)

United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on , and shall terminate five years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of .

Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

20734

DOCKET 11908 *et al.*

Note:

The certificates of public convenience and necessity for Capitol Airways and Saturn Airways, the Board's order adopting and issuing the Revised Part 295 of the Economic Regulations, and the Revised Part 295 itself, which were transmitted to the President with the Board's original opinion, are not included in this Appendix A. They are set forth following the Board's supplemental opinion and order (Order E-20530), adopted February 24, 1964.

(20868)

20868

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 11908, *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

Petition to Intervene by

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc., for the limited purpose of filing the attached Petition for Reconsideration of Order No. E-20531, adopting certain amendments to Part 295 of the Board's Regulations.

Comes now American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc. ("petitioners"), and each of them, to petition the Board to intervene in this proceeding for the limited purpose of filing the attached Petition for Reconsideration of Order No. E-20531 adopting certain amendments to Part 295 of the Board's Regulations. • • •

• • • • •

20871

* * * * *

6. The hearings in the case before an Examiner of the Board closed on May 2, 1962. On July 10, 1962, Congress passed P. L. 87-528. This law amended the Federal Aviation Act to authorize the issuance of interim authority to the Supplemental Air Carriers pending disposition of their applications for permanent certificates also authorized under the law. It further specifically amended Section 401(e) to eliminate the applicability of its charter authorization to Supplemental Air Carriers, and added Section 101(33) to the Act which defined Supplemental air transportation as meaning "charter trips . . . ." Accordingly, at that point the question of whether the Board had the statutory authority to authorize any variations in the accepted definition of "charter" under the then existing statutory provisions, the sole legal issue in this case up to that point, became moot.

20872

7. The *new* issue raised by the passage of P. L. 87-528 in July of 1962 was the scope of the Board's authority to define "charter" under the new Section 101(33) defining Supplemental air transportation as "charter trips", a matter which had been the subject of exhaustive treatment by the Congress. This new issue was immediately posed to the Board the month following the passage of P. L. 87-528 in the form of applications for interim authority by Supplemental Air Carriers which embraced requests for "split charters", all-expense tours, and other variations of "charter". Petitioners vigorously protested these requests

in the interim authority proceedings. The Board held that "there is a serious question whether the Board as a matter of law . . . " could grant such requests, but decided to defer decision thereon. Standard Airways, Inc., E-18883, p. 14, Oct. 5, 1962.[1] Furthermore, it announced through a Press Release dated March 27, 1963, that it intended to develop a program for processing the permanent certificate applications "prior to the close of Fiscal '63 . . . . " and on July 12, 1963, the Chief Examiner of the Board issued a "Notice" reporting the Board's decision to move forward with these applications in the *Supplemental Air Service Case,* Docket No. 13795, *et al.,* and soliciting from all airlines their written comments, to be submitted prior to August 5, 1963, on such matters as "the issues therein." Among the issues submitted by Petitioners, and others, of course, was the

20873

scope of the statutory authority of Supplemental Air Carriers to conduct "charters" as that term is used in the new Section 101(33) of the Act. Shortly thereafter the Board announced that "The basic role of the supplemental air carriers will be decided by the Board in the *Supplemental Air Service Case,* Docket 13795, *et al.,*" Order E-20078, Oct. 8, 1963.

8. The Board, however, has apparently now determined to use this case, commenced over 1½ years before P. L. 87-528 was passed, rather than the permanent supplemental air carrier certificate proceedings, as the vehicle for the statutory construction of the word "charter" in Section

[1] See also, *World Airways, Inc.*, E-19430, p. 7, March 29, 1963, and *Vance Roberts,* E-19875, p. 2, August 1, 1963.

101(33) of the Act added by P. L. 87-528. A majority of three members held that P. L. 87-528 "deliberately left with the Board the authority to define 'charter services'" which it might do "in consonance with the whole purpose of the Act." (Op., pp. 38, 37). From this ultimate finding of law, it made the subsidiary findings of law that the Board therefore had the statutory authority to authorize "split charters", and all-expense tour charters, although as a matter of policy the latter were not authorized in this decision.

9. These conclusions of law constituted a resolution of an issue of vital significance to Petitioners since, of course, the scope of the Board's *statutory* authority to define charter is identical for transatlantic charters as well as for domestic charters. The Board will be obliged to regard these conclusions as *stare decisis* in the permanent supplemental air carrier certificate proceedings in Docket 13795, *et al.*, if not as a matter of law, then as a practical

matter, for it is inconceivable that the Board would reach two different conclusions of law (as opposed to policy) on an identical issue in different proceedings. Indeed, the Board has already recognized this fact. It said in its Order E-20573, March 13, 1964, in Docket 13795, *et al.*, establishing the procedure for the applications of Supplemental Air Carrier permanent certificates, that any "pertinent principles to be gleaned from that proceeding (the *Charter Investigation*) are now available, subject, of course, to the normal procedures with respect to petitions for reconsideration." Of course, there may still be some additional

areas of the lawful scope of "charter" yet to be explored in Docket 13795, *et al.*, which were not covered in the decision in this case, but the statutory authority of the Board to approve such major, and highly disputed, expansions of the charter concept as "split charters" and all-expense tours have now been decided as a matter of law in this case.

• • • • •

20884

• • • • •

23. The application of the foregoing law to the facts of this case clearly demonstrates Petitioners' "substantial interest" in so much of the majority's decision holding that the Board has a broad authority to define "charter", as that term is used in Section 191(33) of the Act, and, more specifically, to authorize "split charters" and all-expense tours. This construction of law is as much applicable to "charters" in domestic air transportation, where Petitioners primarily provide service as it is to transatlantic "charters". Petitioners are competitors of the Supplemental Air Carriers domestically. They, therefore, have

20885

a "substantial interest" in the majority's construction of law without having to await additional administrative proceedings involving Supplemental Air Carrier's provision of domestic "charters" which will, as a matter of course, apply that statutory construction.

• • • • •

(21179)

21179

Order No. E-20650

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

SERVED APR 6 1964

Issued under delegated authority
April 3, 1964

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

(Financial fitness of Overseas National Airways, Inc.)

ORDER GRANTING AND DENYING INTERVENTION

By supplemental opinion and order E-20530 and E-20531, adopted February 24, 1964, the Board, *inter alia,* reopened the record in this proceeding for further hearing, on an expedited basis, to determine whether any developments since the Board's original decision have rendered Overseas National Airways, Inc., no longer financially fit to conduct transatlantic charter operations authorized under the proposed certificate for that carrier.

By notice dated March 4, 1964, the examiner pointed out the probability that some persons participating as parties in previous stages of the proceeding would have no interest in the present reopened phase of the proceeding and stated his plan to limit participation to Overseas National Airways, Inc., Bureau counsel, and such of those interveners who should submit a statement requesting participation as an intervening party in this reopened phase of the proceed-

ing and that any other persons who participated as applicants in the *Transatlantic Charter Investigation* would be required to file an intervention petition in order to participate as a party.

Pan American World Airways, Inc., and Trans World Airlines, Inc., filed statements requesting continued participation as interveners. Intervention petitions were filed by Airlift International, Inc. (formerly Riddle Airlines, Inc.), Capitol Airways, Inc., The Flying Tiger Line Inc., Modern Air Transport, Inc., Saturn Airways, Inc., and United States Overseas Airlines, Inc. Answer opposing the intervention petitions was filed by Overseas National. By motion filed March 24, 1964, Overseas National also asks that the intervention of Pan American and TWA be rescinded. Pan American and TWA filed answers in opposition to the motion.

21180

Pan American and TWA are certificated air carriers conducting scheduled operations in the transatlantic area. Capitol and Saturn are the two applicants authorized to perform charter service by supplemental opinion and order E-20530 and E-20531. Airlift International, Flying Tiger, Modern, and U. S. Overseas are other applicants in the *Transatlantic Charter Investigation.* While Overseas National claims that their participation as parties will be for the purpose of delaying the proceeding, it has not established any improper conduct on their part.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.11, it is found, upon consideration of the foregoing facts, that the persons set forth in ordering paragraph 1 below have an interest justifying intervention in the *Reopened Transatlantic Charter Investigation* (financial fitness of Overseas National Airways, Inc.), docket 11908 *et al.*

ACCORDINGLY, IT IS ORDERED:

1. That Airlift International, Inc., Capitol Airways, Inc., The Flying Tiger Line Inc., Modern Air Transport, Inc., Pan American World Airways, Inc., Saturn Airways, Inc., Trans World Airlines, Inc., and United States Overseas Airlines, Inc., be and they are granted permission to intervene in the *Reopened Transatlantic Charter Investigation* (financial fitness of Overseas National Airways, Inc.), docket 11908 *et al.*

2. That intervention in the *Reopened Transatlantic Charter Investigation* (financial fitness of Overseas National Airways, Inc.), docket 11908 *et al.*, be and it is hereby denied to all persons other than those listed in paragraph 1 insofar as said persons would otherwise have the right to participate as parties.

3. That the motion of Overseas National Airways, Inc., to rescind the intervention of Pan American World Airways, Inc., and Trans World Airlines, Inc., be and it is denied.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

By Ralph L. Wiser
Hearing Examiner

HAROLD R. SANDERSON
Secretary

(SEAL)

(21199)

21199

Order No. E-20776

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 30th day of April, 1964

Docket 11908 *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

ORDER

Various parties have filed petitions for reconsideration of the Board's decision in this proceeding.[1] In addition, nine domestic trunkline carriers[2] have requested leave to intervene for the purpose of filing a petition for reconsideration

---

[1] Airlift International, Inc. (formerly Riddle Airlines, Inc.), Capitol Airways, Inc., The Flying Tiger Line Inc., Modern Air Transport, Inc., Pan American World Airways, Inc., Saturn Airways, Inc., Trans World Airlines, Inc., United States Overseas Airlines, Inc., and the American Society of Travel Agents, Inc. Answers to petitions have been filed by Capitol, Overseas National Airways, Inc., Pan American, Saturn, TWA, and the Bureau of Economic Regulation.

[2] American Airlines, Inc.; Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

on the issue of the Board's power, as a matter of law, to authorize supplemental air carriers to operate so-called split charters.[3] Pan American has filed a motion to consolidate into the proceeding its recently filed application for unlimited transatlantic charter authority.[4]

In considering the disposition that should be made of the petitions for reconsideration, it is necessary to do so in the light of the present procedural posture of the *Transatlantic Charter Investigation.*

21200

The Board, in its original opinion of October 8, 1963, which it submitted to the President for his approval, found that Capitol Airways, Inc., Saturn Airways, Inc., and Overseas National Airways, Inc., should be issued certificates of public convenience and necessity authorizing them to provide transatlantic charter services and that all other applications and requests consolidated into the proceeding should be denied. The President, in his letter of February 18, 1964, approved the Board's decision to award certificates to Capitol and Saturn but returned the matter to the Board for further evaluation on the fitness of ONA. Pursuant to the President's directive, the Board reopened the proceeding for further hearings on the limited issue of whether any developments since the Board's original decision have rendered ONA no longer financially fit.

The President, however, did not take final action on the Board's recommendation that the applications of Capitol and Saturn to the extent they sought authority to provide

[3] Answers to the petition have been filed by Capitol, Modern, Saturn and the Bureau.

[4] Answers to the motion have been filed by Capitol, Saturn, and the Bureau.

all-expense tours, and the applications of the all-cargo carriers and the remaining supplemental carriers be denied, and those matters, like the application of ONA, remain undisposed of. Thus, the only final disposition that has been made of the various applications consolidated into the proceeding is a partial grant of the applications of Saturn and Capitol.

In view of the foregoing, the petitions, insofar as they seek reconsideration of the Board's determination that there is a need for certificated transatlantic charter service, that the authority should include the right to operate split-charters, that Capitol and Saturn are fit, willing and able and should be awarded certificates, and that certain of the preexisting restrictions on the size of eligible charter organizations and the activities of travel agents should be removed go to matters that are ripe for reconsideration and will be disposed of. Similarly, the petitions of the applicants, insofar as they seek their own certification in lieu of the certification of Capitol and Saturn will be disposed of. On the other hand, the requests of the unsuccessful supplemental and cargo carrier applicants that the Board certificate them in lieu of ONA, or in addition to Capitol, Saturn, and ONA and the requests for all-expense tour authority are premature and will be deferred for action at an appropriate future date.

On the merits of the petitions that are ripe for action, the Board finds that all requests for reconsideration of its decision should be denied. Essentially the various requests urge matters of law and policy which have previously been fully considered and rejected. Nothing has been presented which establishes legal error or warrants a change in the Board's policy determinations in its decision. The petitions

of Flying Tiger and Modern seeking to broaden the scope of the reopened hearing directed by Order E-20531[5] to

21201

encompass the receipt of evidence as to the financial fitness of carriers other than ONA are in conflict with the President's directive as contained in his letter of February 18, 1964 and will be denied.[6]

The petition of American *et al.* to intervene shall be dismissed. The petition was not timely filed and petitioners have not shown good cause for failure to file until this time. Moreover, intervention is sought only for the limited purpose of presenting argument on the issue of the scope of the Board's statutory authority to define the term "charter." This is a matter which has been fully litigated and argued in this proceeding and, as previously indicated, the Board will not reconsider its decision on the question.

In addition, Pan American's motion to consolidate Docket 11908 and its application in Docket 15108 for hearing shall be dismissed. The motion is not timely filed and no good cause for filing the motion at this late date has been shown.[7] In effect it appears that Pan American is seeking relief, via its certificate application, from the current provisions

[5] For obvious reasons USOA's request for an expedited hearing to determine whether it should now be certificated and that, pending certification, it should be temporarily authorized to solicit and perform transatlantic charters subject to such conditions of bond and/or escrow as the Board may require must be denied.

[6] See Order E-20709, April 16, 1964.

[7] Pan American relies on the proposed revision of Part 207 as good cause for its late filing. However, Pan American has had notice of the proposed revision since November 1962 (EDR-48, November 13, 1962) and did not file its application in Docket 15108 and its motion to consolidate until March 23, 1964.

of Part 207 of the Board's Economic Regulations with respect to charter operations.

In our original opinion we adopted the findings and conclusions of the examiner that certain of the preexisting restrictions of Part 295 of the Economic Regulations on the activities of travel agents in relation to charters should be eliminated. Pan American and bureau counsel have called our attention to the fact that in implementing the examiner's conclusions we deleted certain provisions of the regulations that could result in confusion and could be construed as granting authority going beyond that contemplated by the examiner and the Board. Further, Pan American has called our attention to the fact that in adding split charters to the basic definition of charter services we failed to make applicable to those charters the provisions requiring that a charter provide for the engagement of the aircraft "on a time, mileage or trip basis." Such a requirement has always been a part of the charter definition and was inadvertently omitted. In order to avoid confusion and to carry out the

intent of the Board, we will therefore reissue Part 295 so as to include therein the omitted provisions and to make applicable to split charters the provision requiring that a charter provide for the engagement of an aircraft on a time, mileage or trip basis.

ACCORDINGLY, IT IS ORDERED:

1. That, to the extent indicated herein, the petitions for reconsideration of the Board's decision in this proceeding be and they hereby are denied;

2. That the petition to intervene of American *et al.* be and it hereby is dismissed;

3. That the motion to consolidate of Pan American be and it hereby is dismissed;

4. That all remaining petitions and portions of petitions be and hereby are deferred for action at a future date;

5. That Part 295 of the Economic Regulations issued pursuant to Order E-20531, October 8, 1963, be and hereby is reissued in the form attached hereto and made a part hereof;

6. That said reissued regulations shall be effective on April 30, 1964.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

GILLILLAND, MEMBER, CONCURRING:

I adhere to my original views that the public convenience and necessity do not require certification of the applicants for transatlantic charter authority, and that the basic concept of charter service should not be expanded to include split charters. However, I do concur that the petitions for reconsideration should be denied since they do not raise any matters which establish legal error or warrant a change in the Board's decision.

GURNEY, MEMBER, DISSENTING:

I would grant the Petitions for Reconsideration and deny all the applications for transatlantic charter certificates for the reasons set forth in the joint dissent attached to Orders E-20530 and E-20531, adopted February 24, 1964, and October 8, 1963, respectively.

(21203)

21203

Regulation No. ER-408

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Economic Regulations
Revision of Part 295
Effective: April 30, 1964
Adopted: April 30, 1964

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

Revision of Part

By Order E-20531, adopted October 8, 1963, in the *Transatlantic Charter Investigation,* Docket 11908 *et al.,* the Board adopted and issued concurrently therewith amended regulations of the Board designated Part 295 of the Economic Regulations.[1] In Order E-20776, adopted April 30, 1964, the Board denied various petitions for reconsideration of its decision in the *Transatlantic Charter Investigation,* Docket 11908 *et al.,* and found that in order to avoid confusion as to the scope of revised Part 295 and accurately to reflect the Board's determination as to the conditions which should be applied to the transatlantic charter authority granted, Part 295 should be reissued. Since the reissuance embodies only clarifying changes, and for the

[1] Regulation No. ER-400.

reasons set forth in Regulation No. ER-400, the Board finds that further notice and public procedure hereon are unnecessary and not in the public interest.

Accordingly, the Civil Aeronautics Board hereby reissues Part 295 of the Economic Regulations (14 CFR Part 295), effective April 30, 1964, as follows:

Sec.

295.1 Applicability.
295.2 Definitions.
295.3 Waiver.
295.4 Separability.
295.5 Reporting and record retention.

Subpart A—Provisions Relating to Pro Rata Charters

295.10 Applicability of subpart.

Requirements Relating to Air Carriers

295.11 Solicitation and formation of a chartering group.
295.12 Pre-trip notification.
295.13 Tariffs to be on file.
295.14 Terms of service.
295.15 Agent's commission.
295.16 Prohibition against payments or gratuities.

Requirements Relating to Travel Agents

295.20 Prohibition against double compensation.
295.21 Prohibition against payments or gratuities.
295.22 Statement of supporting information.

Requirements Relating to the Chartering Organization

295.30 Solicitation of charter participants.

(21204, 21205, 21206)

295.31 Passengers on charter flights.
295.32 Participation of immediate families in charter flights.
295.33 Charter costs.
295.34 Statements of charges.
295.35 Passenger manifests.
295.36 Statement of supporting information.

21205

Subpart B—Provisions Relating to Single Entity Charters

295.39 Applicability of subpart.
295.40 Tariffs to be on file.
295.41 Terms of service.
295.42 Commissions paid to travel agents.

Subpart C—Provisions Relating to Mixed Charters

295.50 Applicable rules.

Subpart D—Procedure for Advisory Opinion on the Eligibility of a Charterer

295.60 Advisory opinion.

Authority: §§295.1 to 295.60 issued under sec. 204(a), 72 Stat. 743, 49 U. S. C. 1324. Interpret or apply sec. 401 (d)(3) and sec. 401(n); 76 Stat. 143, 144; 49 U. S. C. 1371.

21206

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

§295.1 *Applicability.*

This part establishes the terms, conditions, and limitations of transatlantic supplemental air transportation.

§295.2 *Definitions.* As used in this part, unless the context otherwise requires—

(a) "Transatlantic supplemental air transportation" means charter flights in air transportation performed pursuant to a certificate of public convenience and necessity issued under section 401(d)(3) of the Act authorizing the holder to engage in supplemental air transportation of persons and their personal baggage between points within the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

(b) "Charter flight" means air transportation performed by a direct air carrier on a time, mileage or trip basis where (1) the entire capacity of one or more aircraft has been engaged for the movement of persons and their personal baggage;

(i) by a person for his own use (including a direct air carrier when such aircraft is engaged solely for the transportation of company personnel or commercial passenger traffic in cases of emergency); or

(ii) by a representative (or representatives acting jointly) of a group for the use of such group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services);

or (2) one-half the capacity of an aircraft has been engaged by a person for his own use or by a representative or representatives of a group for the use of such group and

(21206, 21207)

the remaining half of the capacity of such aircraft has been engaged by another person for his own use or by a representative or representatives of a second group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services).

With the consent of the charterer the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

(c) "Pro rata charter" means a charter the cost of which is divided among the passengers transported.

(d) "Single entity charter" means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

21207

(e) "Mixed charter" means a charter the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

(f) "Person" means any individual, firm, association, partnership, or corporation.

(g) "Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

(h) "Charter group" means that body of individuals who shall actually participate in the charter flight.

(i) "Charter organization" means that organization, group or other entity from whose members (and their immediate families) a charter group is derived.

(j) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

(k) "*Bona fide* members" means those members of a charter organization who have not joined the organization merely to participate in the charter as the result of solicitation directed to the general public. Presumptively persons are not *bona fide* members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans and unless they have actually been members for a minimum period of six months prior to the starting flight date. This presumption will not be applicable in the case of charters composed of (1) students and educational staff of a single school, and immediate families thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants in a formal academic study course abroad. In the case of all other charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

(l) "Solicitation of the general public" means (1) a solicitation going beyond the *bona fide* members of an organization (and their immediate families), such as advertising directed to the general public by radio, television, newspaper, or magazine, or (2) the solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

(21207, 21208)

§295.3 *Waiver.*

A waiver of any of the provisions of this regulation may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

21208

§295.4 *Separability.*

If any provision of this part or the application thereof to any air transportation, person, class of person, or circumstance is held invalid, neither the remainder of the part nor the application of such provision to other air transportation, persons, classes of persons, or circumstances shall be affected thereby.

§295.5 *Reporting and record retention.*

(a) Fifteen days after the end of each calendar month, each carrier operating pursuant to this part shall file with the Board's Bureau of Economic Regulation a report setting forth the following information pertaining to each charter flight performed during said month pursuant to this part:

(1) Date of trip;

(2) Points served;

(3) Number of round-trip and one-way passengers;

(4) Name of chartering organization;

(5) Description of chartering organization disclosing basis for conclusion that the group is *bona fide* (identify criteria relied upon);

(6) Name of travel agent; and

(7) Construction of tariff charge.

(b) Prior to performing any supplemental air transportation pursuant to this part the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof.

(c) Each air carrier operating pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

SUBPART A—PROVISIONS RELATING TO PRO RATA CHARTERS

§295.10 *Applicability of this subpart.*

This subpart sets forth the special rules applicable to pro rata charters.

REQUIREMENTS RELATING TO AIR CARRIERS

§295.11 *Solicitation and formation of a chartering group.*

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight.

(21209)

§295.12 *Pre-trip notification.*

Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this regulation, Part 295.* The charter contract shall include a provision that the charterer and any agent thereof, shall only act with regard to the charter in a manner consistent with this regulation and that the charterer shall within due time submit to the carrier such information as specified in §§295.34 and 395.35 hereof and submit to each charter participant the information identified in §295.34. The carrier shall also require that the charterer and any travel agent involved shall furnish it in due time for review before flight the information required in §§295.36 and 295.22, respectively.

§295.13 *Tariffs to be on file.*

No air carrier shall perform any supplemental air transportation unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for the use of the entire capacity or one-half the capacity of one or more aircraft in such supplemental air transportation and showing all rules, regulation practices and services in connection with such supplemental air transportation, including eligibility requirements for charter groups not inconsistent with those established in this part.

---

* Copies of this regulation are available by purchase from the Superintendent of Documents, Washington, D. C., 20402. Single copies will be furnished without charge on written request to the Publications Unit, Civil Aeronautics Board, Washington, D. C., 20428.

§295.14 *Terms of service.*

(a) The total charter price and other terms of service rendered pursuant to this part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective charter flight and the contract must be for the entire capacity or for one-half the capacity of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown in the performance of the charter, *pro-*

vided that the carrier shall not charge the charterer for ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

(b) Insurance coverage shall be maintained in compliance with the insurance requirements of Part 208 of the Economic Regulations.

(c) The air carrier shall provide substitute transportation and pay incidental expenses, with respect to delays on return portions of flights, as follows:

(1) *Substitute air transportation.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the

(21210)

forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this subparagraph.

(ii) As soon as the air carrier discovers; or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than forty-eight hours, such air carrier shall arrange for and pay the costs of substitute air transportation for the charter group on another charter flight, operated by any other air carrier or foreign air carrier.

(iii) When neither the charter transportation contracted for nor substitute transportation has been performed before the expiration of forty-eight hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually ticketed flights and the chartered air carrier shall pay the costs of such air transportation to the substitute air carrier or foreign air carrier.

(iv) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this subparagraph, periods of delay caused by the prohibition of flights from the airport of departure because of weather or other operational conditions shall be excluded if, and while, the air carrier had an airworthy aircraft which is capable of transporting the charter group

in a condition of operational readiness posted at such airport.

(v) Air carriers may subcontract the performance of transatlantic passenger charter services which they have contracted to perform, only to air carriers authorized by the Board to perform such services.

21211

(2) *Incidental expenses.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the sixth hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this subparagraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent, for the account of each passenger, including infants and children traveling at reduced fares.

(ii) Such payments shall be made at the rate of $16.00 for each full twenty-four hour period of delay following the scheduled departure time. However, the sum of $8.00 shall be paid for each passenger delayed six hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8.00 shall be paid for each passenger delayed in installments of $4.00 for the first and second succeeding six-hour period of delay, or any fractional part thereof. If the delay continues beyond a period of 24 hours following the scheduled

departure time, such payments shall be made in equal installments of $4.00 for each further six-hour period of delay, or any fractional part thereof. *Provided, however,* That the air carrier may, at its option, discharge this obligation by providing free meals and lodging in lieu of making such payments. The obligation of the air carrier to pay incidental expenses or provide free meals and lodging shall cease when substitute air transportation is provided in accordance with the provisions of subparagraph (c)(1) of this section.

(d) Each and every contract for a transatlantic charter to be operated hereunder shall incorporate the provisions of subparagraphs (b) and (c) above concerning insurance, substitute transportation, and incidental expenses.

(e) The carrier shall require full payment of the total charter price or the posting of a satisfactory bond for full payment prior to the commencement of the air transportation.

(f) In the case of a round-trip charter, one-way passengers shall not be carried except that up to five percent of the charter group may be transported one way in each direction. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid the five percent limitation aforesaid. In the case of a charter contract calling for two or more round trips, there shall be no intermingling of passengers and each plane-load or one-half plane-load group shall move as a unit in both directions.

§ 295.15 *Agent's commission.* The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of five percent of the total charter price as set forth in the carrier's charter tariff on file with the Board, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 295.16 *Prohibition against payments or gratuities.* A carrier shall make no payments nor extend gratuities of any kind, directly or indirectly, to any member of a chartering organization in relation either to air transportation or land tours or otherwise. Nothing in this section shall preclude a carrier from paying a commission (within the limits of section 295.15) to a member of a chartering organization if such member is its agent, or restrict a carrier from offering to each member of the charter group such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, canvas traveling bag or a money exchange computer).

REQUIREMENTS RELATING TO TRAVEL AGENTS

§ 295.20 *Prohibition against double compensation.* A travel agent may not receive a commission from both the direct air carrier and the charterer for the same service.

§ 295.21 *Prohibition against payments or gratuities.* A travel agent shall make no payments nor extend gratuities

(21212, 21213)

of any kind, directly or indirectly, to any member of a chartering organization whether in relation to air transportation or otherwise. Nothing in this section shall restrict a travel agent from offering to each member of the charter group such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, a canvas traveling bag or a money exchange computer).

§ 295.22 *Statement of supporting information.* Travel agents shall execute, and furnish to air carriers, Section A of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

REQUIREMENTS RELATING TO THE CHARTERING ORGANIZATION

§ 295.30 *Solicitation of charter participants.* As the following terms are defined in § 295.2 hereof, members of the charter group may be solicited only from among the *bona fide* members of an organization, club or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public.

21213

§ 295.31 *Passengers on charter flights.* Only *bona fide* members of the charterer, and their immediate families, may participate as passengers on a charter flight. The charterer must maintain a central membership list, available for inspection by the carrier or Board representative, which shows the date each person became a member.** Where the

** Where the charter is based on employment in one entity or student status at a college, records of the corporation, agency or college will suffice to meet this requirement.

charterer is engaging round-trip transportation, one-way passengers shall not participate in the charter flight except as provided in § 295.14(f) hereof. When more than one round trip is contracted for, intermingling between flights or reforming of plane-load or one-half plane-load groups shall not be permitted and each such group must move as a unit in both directions.

§ 295.32 *Participation of immediate families in charter flights.* The immediate family of any *bona fide* member of a charter organization may participate in a charter flight.

§ 295.33 *Charter costs.*

(a) The costs of charter flights shall be prorated equally among all charter passengers and no charter passenger shall be allowed free transportation; except that (1) children under twelve years of age may be transported at a charge less than the equally prorated charge; (2) children under two years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

(c) Reasonable administrative costs of organizing the charter may be divided among the charter participants.

(21213, 21214)

Such costs may include a reasonable charge for compensation to members of the charter organization for actual labor and personal expenses incurred by them. Such charge shall

21214

not exceed $300 (or $500 where the charter participants number more than 80) per round-trip flight. Neither the organizers of the charter, nor any member of the chartering organization, may receive any gratuities or compensation, direct or indirect, from the carrier, the travel agent, or any organization which provides any service to the chartering organization whether of an air transportation nature or otherwise. Nothing in this section shall preclude a member of a chartering organization who is the carrier's agent from receiving a commission from the carrier (within the limits of section 295.15), or prevent any member of the charter group from accepting such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, a canvas traveling bag or a money exchange computer).

(d) If the total expenditures, including among other items compensation to members of the chartering organization, referred to in § 295.33(c) above, but exclusive of expenses for air transportation or land tours, exceed $750 per round-trip flight, such expenditures shall be supported by properly authenticated vouchers to be given to the carrier with the "Post Flight Report" required pursuant to § 295.34.

§ 295.34 *Statements of charges.*

(a) Any announcements or statements by the charterer to prospective charter participants of the anticipated in-

dividual charge for the charter shall clearly identify the portion of the charges to be separately paid for the air transportation, for the land tour, and for the administrative expenses of the charterer.

(b) Within 15 days after completion of each one-way or round-trip flight the charterer shall complete and supply to each charter participant and the air carrier involved a detailed report showing the charge per passenger transported and the charterer's total receipts and expenditures. The report shall be submitted in the form of, and contain such information including the above as more fully specified by, the "Transatlantic Charter—Post Flight Report" annexed hereto and made a part of this regulation.

§ 295.35 *Passenger manifests.*

(a) Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of the persons to be transported and specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described). The manifest may include "stand-by" participants (by name, address and relationship to charterer).

21215

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger manifest as follows:

(1) A *bona fide* member of the chartering organization at the time the organization first gave notice to its members

of firm charter plans and will have been a *bona fide* member of the chartering organization for at least six months prior to the starting flight date. Specify on the passenger manifest as "(1) member."

(2) The spouse, dependent child or parent of a *bona fide* member who lives in such member's household. Specify on the passenger manifest as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) *Bona fide* members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver. Specify on the passenger manifest as "(3) special" or "(3) member" (where participants are from a study or campus group or from a Government agency, industrial plant or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the eastbound and westbound trips must be explained on the manifest.

(d) Attached to such manifest must be a *certification,* signed by a duly authorized representative of the charterer, reading:

"The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a *bona fide*

member of the chartering organization at the time the chartering organization first gave notice to its members of firm charter plans, and will have been a member for at least six months prior to the starting flight date, or (2) is a *bona fide* member of an entity consisting of (a) students and educational staff of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household, or

21216

(5) is a *bona fide* participant in a charter composed of participants in a formal academic study course abroad.

(Signature)

.....".

§ 295.36 *Statement of supporting information.* Charterers shall execute and furnish to air carriers Section B of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

SUBPART B—PROVISIONS RELATING TO SINGLE ENTITY CHARTERS

§ 295.39 *Applicability of subpart.* This subpart sets forth the special rules applicable to single entity charters.

(21216)

§ 295.40 *Tariffs to be on file.* The provisions of § 295.13 shall apply to charters under this subpart.

§ 295.41 *Terms of service.*

(a) The total charter price and other terms of service shall conform to those set forth in the applicable tariff filed in accordance herewith and the contract shall be for the entire capacity or one-half the capacity of one or more aircraft.

(b) The terms of service prescribed in § 295.14(b), (c) and (d) shall be applicable in the case of single entity charters.

§ 295.42 *Commissions paid to travel agents.* No direct air carrier shall pay a travel agent any commission in excess of five percent of the total charter price or more than the commission related to charter flights paid to an agent by a carrier certificated to fly the same route, whichever is greater.

Subpart C—Provisions Relating to Mixed Charters

§ 295.50 *Applicable rules.* The rules set forth in Subpart A hereof shall apply in the case of mixed charters.

Subpart D—Procedure for Advisory Opinion on the Eligibility of a Charterer

§ 295.60 *Advisory opinion.* An air carrier or prospective charterer may request an advisory opinion from the Bureau of Economic Regulation, Civil Aeronautics Board, Washington, D. C. 20428, regarding the eligibility of the prospec-

tive charterer to obtain charter service in accordance with this regulation. The Bureau's opinion will be based on the representations submitted and shall not be binding upon the Board in any proceeding in which the lawfulness of the respective charter may be in issue. Such representations should include as much of the information specified by Section B, Part II, of the Statement of Supporting Information as is available to the person requesting the advisory opinion.

Note: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Members GURNEY and GILLILLAND dissented.

(21218)

21218

(See opposite) ☞

STATEMENT OF SUPPORTING INFORMATION*

PART I - To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter contract, clearly indicate applicability of answers.)

1. Name of transporting carrier: _____

2. Commencement date(s) of proposed flight(s): (a) Going _____ (b) Returning _____

3. Points to be included in proposed flight(s): (a) From _____ to _____ (b) Returning from _____ to _____ (c) Other stops required by charterer: _____ (d) Technical stops required by carrier: _____ (e) Planned routing: _____

4. (a) Type of aircraft to be used: _____ (b) Seating capacity: _____ (c) Number of persons to be transported: _____

5. (a) Total charter price: _____ (b) Does charter price conform to tariff on file with the Board? _____ (c) If pro rata or mixed charter, explain construction of charter price in relation to tariff on file with the Board (in case of mileage tariff, show mileage for each segment involved and indicate whether segment is live or ferry). _____

6. (a) Has the carrier paid, or does it contemplate the payment of any commissions, direct or indirect, in connection with the proposed flight? Yes ( ) No ( ) (b) If "yes," give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 3 percent of the total charter price, attach a statement justifying the higher amount under this regulation. _____

7. (a) Will the carrier or any affiliate provide any services or perform any functions in addition to the actual air transportation? Yes ( ) No ( ) (b) if "yes," describe services or functions. _____

8. Name and address of charterer: _____

9. If charter is single entity, indicate purpose of flights: _____

10. On what date was the charter contract executed? _____

11. If the charter is pro rata, has a copy of Part 295 of the Civil Aeronautics Board's Economic Regulations been mailed to or delivered to the prospective charterer? Yes ( ) No ( )

PART II - To be completed for pro rata or mixed charters only:

Section A - To be supplied by travel agent, or, where none, by the air carrier or an affiliate under its control when either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including land tour arrangements):

1. What specific services have been or will be provided by agent to charterer on a group basis? _____

2. What specific services have been or will be provided by agent to individual participants in the proposed charter? _____

3. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any member of the chartering organization in relation either to the proposed charter flight or any land tour? Yes ( ) No ( )

4. Does the agent have any financial interest in any organization rendering services to the chartering organization? Yes ( ) No ( ) If answer is "yes," explain: _____

*This must be retained by the air carrier for two years pursuant to the requirements of Part 249, but open to Board inspection, and to be filed with the Board on demand.

Verification[1]

STATE OF _____)
COUNTY OF _____) SS:

_____ (Name), being duly sworn, deposes and says that to the best of his knowledge and belief all the information presented in Part II, Section A of this Statement is true and correct.

Sworn to before me this day, the ___ of _____, 19_

(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

_____
Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Warranty

I, _____ (Name), represent and warrant that I have acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section A) and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.

_____
Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Section B - To be supplied by charterer:

1. Description of chartering organization, including its objectives and purposes: _____
2. What activities are sponsored by the chartering organization? _____
3. When was the organization founded? _____
4. Qualification or requirements for membership in organization and membership fee, if any: _____
5. Has there been any reference to prospective charter flights in soliciting new members for the chartering organization? Yes ( ) No ( )
6. If total membership in the chartering organization is less than 1,000, submit list showing names and addresses of members in good standing.[2] If total membership in the chartering organization is 1,000 or more, state where a list of members is available for inspection. _____
7. Attach list of prospective passengers, showing for each: Name, address, and whether a member of chartering organization or relationship to a member of chartering group. (Note: This is a list of prospective passengers and does not necessarily have to represent the passengers actually carried.)
8. Purpose of trip: _____
9. What are requirements for participation in charter? _____
10. How were prospective participants for charter solicited (attach any solicitation material)? _____

11. Will there be any participants in the charter flight other than (1) members of the chartering organization or (2) spouse, dependent children, and parents of a member of the chartering group, residing in the same household with the member? Yes ( ) No ( )

12. Will there be any members of the chartering organization participating in the charter who will have been members of the organization for a period of less than six months prior to flight date?[2] Yes ( ) No ( ) If answer is "yes," give names of participants who will not have been members for six months and justify (see §295.2(k)): _____

13. If there is any intermediary involved in the charter, other than the travel agent whose participation is described in Part II, Section A, submit name, address, remuneration, and scope of activity: _____

14. Estimated receipts: _____ (Pro rata charge) X _____ (No. of passengers) = $_____ (Estimated receipts from charter).

Estimated receipts from other sources, if any: _____

Explain: _____

(a) Total receipts $_____

Estimated expenditures, including aircraft charter (separately itemize air transportation, land tour, and administrative expenses):

Item	Amount	Payable to

(b) Total expenditures $_____. Explain any difference between (a) and (b): _____

15. Are any of the expenses included in Item 14, above, to be paid to any members of the chartering organization? Yes ( ) No ( ) If "yes," state how much, to whom and for what services: _____

16. Is any member of the chartering organization to receive any compensation or benefit directly or indirectly from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip? Yes ( ) No ( ) If "yes," explain fully: _____

17. Will any person in the group (except children under two years) be transported without charge? Yes ( ) No ( )

18. Will charter costs be divided equally among charter participants, except to the extent that a lesser charge is made for children under twelve years old? Yes ( ) No ( )

19. Separately state for the outbound and inbound flights the number of one-way passengers anticipated to be transported in each direction: _____

20. If more than one round trip is contracted for, will each group move as a unit in both directions? Yes ( ) No ( )

21. If transatlantic charters have been performed for organization during past 5 years, give dates and name of carrier performing charters: _____

22. Has a copy of Part 295, "Transatlantic Supplemental Air Transportation," of the Economic Regulations of the Civil Aeronautics Board been received by the charterer? Yes ( ) No ( )

21220

923a

Verification of Charterer[1]

STATE OF _____)
COUNTY OF _____) SS:

_____ (Name) and _____ (Name), being duly sworn, hereby separately depose and say that to the best of the knowledge and belief of each of them all the information

(21

in Part II, Section B, of this Statement is true and correct.

(Signature and title of officer - This should be the chief officer of the chartering organization except in the case of a school charter, in which case the verification must be by a school official not directly involved in charter.)

(Signature - person within organization in charge of charter arrangements.)

Sworn to before me this day, the ____ of _____, 19__

Sworn to before me this day, the ____ of _____, 19__

(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)

(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)

(SEAL)

(SEAL)

Warranty of Charterer

I, _____ and _____
Name Name

represent and warrant that the charterer has acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section B), and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.

(Signature and title of officer - This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty must be by a school official not directly involved in charter.)

(Signature - person within organization in charge of charter arrangements.)

Verification of Employer[1/]

(To be furnished where eligibility to participate in charter is dependent upon employment by a particular entity.)

STATE OF _____)
COUNTY OF _____) SS:

_____, being duly sworn, deposes and says that to the best of his knowl-
Name
edge and belief solicitation for this charter has been confined to persons employed by _____ or persons in the immediate families of such employees. (Name of employer entity.)

Sworn to before me this day, the ____ of _____, 19__

(Signature and title of authorized official or employer.)

(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

Warranty of Air Carrier

To the best of my knowledge and belief all the information presented in this statement, including but not limited to, those parts verified by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.[3/]

(Signature and title of authorized official of air carrier.)

1/ Whoever, having taken an oath before a competent --- person --- that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed,

is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. Title 18, U.S.C., §1621.

2/ Not applicable to college campus or study-group charters, nor to charters limited to employees of a single Government agency, industrial plant or mercantile company.

3/ Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to keep or preserve accounts, records and memoranda in the form and manner prescribed by the Board, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record or memorandum, shall be guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000. Title 49, U.S.C., §1472.

TRANSATLANTIC CHARTER POST FLIGHT REPORT

Instructions:

The charterer shall complete and file a report in this form with the air carrier within 15 days of each one-way or round-trip charter flight. A report in this form shall also be furnished each charter participant by the charterer within 15 days after completion of each one-way or round-trip charter flight.

1. Name of carrier: _____

2. Name of chartering organization: _____

3. Analysis of charterer's receipts:

   (a) _____ (No. of one-way psgrs.) X _____ (Charge per psgr.1/ (including amounts later refunded)) = _____

   (b) _____ (No. of round-trip psgrs.) X _____ (Charge per psgr.1/ (including amounts later refunded)) = _____

   (c) Receipts from other sources (explain) = _____

   (d) Total receipts [(a) + (b) + (c)] = _____

4. Analysis of charterer's expenditures:

Item of expenditure2/	Paid to3/	Amount

Total4/ = _____

Verification1/

STATE OF _____)
COUNTY OF _____) SS:

I, _____ (Name), being duly sworn, hereby depose and say that this report has been prepared by me or under my direction, that I have carefully examined it and that to the best of my knowledge and belief it is a complete and accurate statement, and a copy hereof has been distributed to each charter participant.

Sworn to before me this day, __ of _____, 19__ _____ (Signature of person in charge of charter arrangements)

_____
(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

1/ If charter cost was not divided equally among all participants actually transported, indicate clearly the individual amounts collected and the number of passengers paying each such amount.

2/ As a separate item there should be listed here a total of all the amounts refunded to the charter participants; also list separately air transportation, land tour, and administrative expenses, and break down administrative expenses so as to show such items as postage and printing, and to show compensation for labor and personal expenses paid to any member of chartering organization.

3/ Disclose any relationship to chartering organization.

4/ If this item does not agree with item 3(d), submit an explanatory statement as to the reasons therefor. If the total expenditures (including among other items compensation to members of the chartering organization but exclusive of expenses for air transportation or land tours) exceed $750 per round trip, such expenditures shall be fully supported by vouchers submitted to and retained by the direct air carrier operating the charter. Such vouchers must cover all expenditures made on behalf of the chartering group including any expenditures for banquets, gifts, local transit, etc.

21909

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(FINANCIAL FITNESS OF OVERSEAS NATIONAL AIRWAYS, INC.)

Docket 11908 *et al.*

RECOMMENDED DECISION OF RALPH L. WISER,
HEARING EXAMINER

Served: Oct 8 1964

Upon:

Stephen D. Potts, 910—17th St., N. W., Washington, D. C. 20006, for Overseas National Airways, Inc.

Frederick A. Ballard, 912 American Security Bldg., Washington, D. C. 20005, and *James B. Franklin,* Box 48-535, International Airport Branch, Miami 48, Fla., for Airlift International, Inc. (formerly known as Riddle Airlines, Inc.)

Theodore I. Seamon, 700 Woodward Bldg., Washington, D. C. 20005, for Capitol Airways, Inc.

Ivan V. Kerno, 1201 Shoreham Bldg., Washington, D. C. 20005, for The Flying Tiger Line Inc.

Albert F. Beitel, 905 American Security Bldg., Washington, D. C. 20005, for Modern Air Transport, Inc.

Jerry W. Ryan, Pan American World Airways, Inc., Pan

(21909)

Am Bldg., 200 Park Ave., New York, N. Y. 10017, for Pan American World Airways, Inc.

Robert M. Lichtman, 850 Washington Bldg., Washington, D. C. 20005, for Saturn Airways, Inc.

Joel H. Fisher, 1001 Connecticut Ave., N. W., Washington, D. C. 20036, for Seaboard World Airlines, Inc.

Joseph F. Healy, Jr., 640 Shoreham Bldg., Washington, D. C. 20005, for Trans World Airlines, Inc.

Steward R. Carter, Jr., 330 "G" St., S. W., Washington, D. C. 20024, for United States Overseas Airlines, Inc.

Howard G. Feldman, Civil Aeronautics Board, Washington, D. C. 20428, for the Bureau of Economic Regulation.

Exceptions, if any, must be filed with the Docket Section of the Civil Aeronautics Board, Washington, D. C. 20428, and served upon all parties within 10 days after the date of service shown above. Briefs may be filed and served on all parties within 10 days after the date fixed for filing exceptions.

21910

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(FINANCIAL FITNESS OF OVERSEAS NATIONAL AIRWAYS, INC.)

Docket 11908 *et al.*

Overseas National found no longer financially fit to conduct transatlantic charter operations authorized under the proposed certificate for that carrier, and its application must be denied.

Recommended that the Board assign for oral argument the question as to further procedure appropriate in connection with the Board's finding that three charter carriers are required.

Appearances:

Stephen D. Potts, Ramsay D. Potts, Jr., and *Chauncey H. Levy* for Overseas National Airways, Inc.

Lipman Redman, Frederick A. Ballard, R. J. Shortlidge, Jr., and *John W. Kern III* for Airlift International, Inc. (formerly known as Riddle Airlines, Inc.)

Theodore I. Seamon, for Capitol Airways, Inc.

Ivan V. Kerno and *Norman L. Meyers* for The Flying Tiger Line, Inc.

Albert F. Beitel for Modern Air Transport, Inc.

Jerry W. Ryan for Pan American World Airways, Inc.

(21910, 21911)

Robert M. Lichtman for Saturn Airways, Inc.

Joel H. Fisher for Seaboard World Airlines, Inc.

Edmund E. Harvey and *Joseph F. Healy, Jr.*, for Trans World Airlines, Inc.

Steward R. Carter, Jr., for United States Overseas Airlines, Inc.

Howard G. Feldman for the Bureau of Economic Regulation.

21911

RECOMMENDED DECISION OF RALPH L. WISER, HEARING EXAMINER

The matter for decision herein concerns the financial fitness of Overseas National Airways, Inc., to engage in transatlantic charter operations. On October 8, 1963, the Board reached its decision in the *Transatlantic Charter Investigation* and submitted it to the President for approval, pursuant to section 801 of the Federal Aviation Act of 1958, as amended. Overseas National was one of the three supplemental air carriers selected therein by the Board to receive certificates of public convenience and necessity authorizing transatlantic charter operations. However, the President on February 18, 1964, returned the decision for further evaluation of the award of a certificate to Overseas National. The other portions of the decision were approved and have become effective. Pursuant to the President's directive, the Board reopened the proceeding for further hearing to determine whether any developments since the Board's original decision have rendered Overseas National no longer financially fit to conduct transatlantic charter operations authorized under the proposed certificate for

that carrier. Hearing has been held and briefs filed with the examiner. .

Overseas National contends that it is more financially fit than it was any of the three times the Board found it fit within the past 2 years, that it has gained financial strength by a clean start under an arrangement with creditors, that its financial strength has been enhanced by addition of new officers, that it has proposed a financially sound operation, that the initial capital to recommence operations will be available, and that it is as fit financially as many supple-

mental carriers found by the Board to be fit. The Flying Tiger Line Inc. contends that transatlantic charter operations are clearly vulnerable to financial unfitness and that Overseas National is bankrupt, its plan of arrangement remains to be approved, it conducts no operations, has no organization or operating staff, has no access to new money, and would still be insolvent if the proposed plan of arrangement were confirmed. Bureau counsel argues Overseas National to be unfit on substantially the same grounds as Flying Tiger and takes the position that the proceeding should be reopened for review of the need for a third carrier and to permit new applications and updating of the evidence supporting applications on file. Capitol Airways, Inc., opposes this latter recommendation and urges that in the event Overseas National is found financially unfit no new proceedings are required and no third carrier should be selected. Airlift International, Inc., Flying Tiger, and Seaboard World Airlines, Inc., submit that there is no issue herein concerning how the case should proceed if Overseas National is found financially unfit.

(21912, 21913)

The evidence adduced at the hearing shows that Overseas National is patently unable financially to engage in transatlantic charter air transportation under a certificate of public convenience and necessity at this time, and no financial plan has been established which would justify a conclusion that it can do so in the near future.

Overseas National instituted proceedings under section 322 of Chapter XI of the Bankruptcy Act by filing a petition in the District Court of the United States for the Eastern District of New York on October 28, 1963, in which it stated that it was insolvent and asserted that it intended

21913

to propose an arrangement pursuant to Chapter XI of the Bankruptcy Act. It attached to that petition a balance sheet as of October 4, 1963, showing assets of $747,342, liabilities of $2,088,535, and a deficit of $1,341,193.

Its summary of debts and assets submitted to the court with a certificate of its executive vice president, dated January 24, 1964, shows debts totaling $3,514,186 and assets totaling $527,093.

The carrier has since October 1963 been authorized by the court to continue to operate its business as a debtor in possession. However, it has not performed air transportation since the bankruptcy proceeding was started[1] and its operations have related primarily to maintaining or disposing of its assets. It has two employees (the assistant secretary and the assistant treasurer) and its facilities consist of office and warehouse space and an inventory of spare parts at John F. Kennedy International Airport. Thus,

[1] The last flight reported to the Board was conducted on October 4, 1963.

Overseas National does not have the going-concern status as an air carrier which might under some circumstances show ability to operate in spite of adverse financial statement showings. Accordingly, the cases are inapposite which it cites showing the Board to have found operating air carriers fit, willing, and able even though their balance sheet figures were unfavorable.[2]

21914

Overseas National's argument that it is more financially fit now than it was on three previous occasions in the past 2 years when the Board found it fit, based on the fact that the carrier at those times had a deficit net worth on its balance sheet, whereas, it contends, it would have a positive net worth under a proposed plan of arrangement, is rendered inapt by the record of financial failure following those findings.

A plan of arrangement has been proposed and has been accepted by a majority in the number and amount of the creditors, and Overseas National expects it to be confirmed by the court. This plan provides that priority tax and governmental agency claims shall be paid on confirmation, priority wage claims shall be paid 25 percent in cash on confirmation and the balance in 10 monthly installments, unsecured creditors' claims of $100 or less shall be paid 25 percent in full settlement on confirmation, and unsecured creditors' claims of more than $100 shall be paid 10 percent in full settlement (2½ percent in 12 months, 5 percent in 24 months, and 2½ percent in 30 months from confirmation).

---

[2] Orders E-18839, E-18868, E-18870, and E-18871, dated October 5, 1962.

(21914, 21915)

The applicant submits a proposed plan of operation based on confirmation of the plan of arrangement and on use of one to four DC-7CF aircraft in contract and charter operations over a 15-month period. This contemplates a total of 7,346 flight hours (1,428 contract, 4,950 foreign charter, 968 domestic charter), which are expected to generate revenues totaling $4,674,575 ($875,455 contract, $3,051,349 foreign charter, $747,771 domestic charter). Expenses are estimated

21915

at $4,192,448 ($3,637,704 direct operating expense, $554,744 indirect operating expense). Amortization of preoperating expense at $3,550 monthly (to provide for change over a 3-year period) would total $53,250. Payments to creditors under the proposed plan of arrangement would total $142,844. Under this forecast Overseas National would accrue a profit of $286,033 for the 15-month period if a 15-percent nonrevenue mileage were experienced in foreign charter operations and $62,555 in the event a 20-percent nonrevenue mileage in such operations were experienced.

The carrier would have new management under the plan of operations presented at the hearing. The chief executive officer would be Mr. Bernard J. Herkimer, who would be chairman of the board of directors and treasurer. His commercial aviation experience dates from 1956, when he became an employee of Aviation Financial Services, Inc., in which he rose to the position of executive vice president-treasurer. In 1963, he formed the B. J. Herkimer Company, specializing in financial services to the aviation industry. He has flown for approximately 20 years as a private pilot and is qualified for single- and multi-engine land aircraft. His business experience dates to the middle 1930's. Mr.

Herkimer owns Camaero, Inc., which is a creditor of Overseas National, claiming $1,060,000, which would be reduced to 10 percent under the plan of arrangement.

Mr. Herkimer would have effective control of Overseas National. It is contemplated that he would hold an option to purchase 49 percent of the 100,000 shares of stock of Overseas National at 1 cent per share. The other 51 percent would be deposited in escrow with the Creditors Com-

21916

mittee to assure that the plan of arrangement is carried out, and when released from this escrow agreement would be transferred to Mr. Herkimer as a voting trustee for 10 years. This agreement is contained in a draft which is in the hands of the present stockholders for signature.

Mr. Albert E. Blomquist would be vice president of sales and operations and a director. He has been a consulting transportation engineer since 1946 and worked in international airline operations and sales from 1949 to 1962. He provided management and technical assistance for the establishment of El Al Airlines over a 3-year period and provided basic tariff structures, sales advice, equipment studies, and operational advice for Icelandic Airlines between 1952 and 1962. Mr. Blomquist is now developing equipment and operating formulas for several short-haul and intrastate carriers. In 1945 and 1946 he was director of airport and facilities engineering for Eastern Air Lines, Inc. Between 1939 and 1944 he held positions as an aviation consulting engineer in business and government and served for 2 years as staff officer, U. S. Army Air Force, in charge of airborne planning and development of troop carrier activities.

(21916, 21917)

Mr. Howell T. Sawyer would be the secretary and a director. His business experience dates to his graduation from Yale University in 1920 and has included security sales, industrial and labor relations, management consulting, and personnel management. Since 1956 he has been account executive of Dewitt Conklin Organization, a financial and public relations firm.

21917

The only employees who were with Overseas National when it previously engaged in air transportation who would be regularly employed in the future would be Mr. R. E. Sizmur, assistant treasurer, and Clara D. Smith, assistant secretary.

Overseas National would use leased DC-7CF aircraft, the first two in use to be leased from Aero Rent, Inc., a corporation owned by Mr. Herkimer. These aircraft were formerly owned by Camaero, Inc., a corporation also owned by Mr. Herkimer,[3] and were modified for Overseas National prior to the receivership.

The applicant would obtain overhaul and maintenance service under contract. It has on hand or will receive with the aircraft a complement of overhaul and line spare parts necessary to maintain dependable operation.

The carrier submitted a *pro forma* balance sheet as of June 30, 1964, based on approval of the proposed plan of arrangement now before the referee in bankruptcy, showing as follows:

[3] The election of Mr. Herkimer and the lease of these aircraft would of course be subject to Board approval.

21918

ASSETS

Current Assets:			
Cash on Hand and in Bank		$ 72,215	
Restricted Cash and Receivables		11,000	
Accounts Receivable:			
U. S. Government	$18,279		
Government of Canada	70,208		
State of California	21,739		
Other	4,078	114,304	
Inventories		245,874	$443,393
Special Funds and Investments			10,760
Flight Equipment-Spare Engines			120,000
Deferred Charges			62,307
Contingent Assets			75,000
Total Assets			$711,460

LIABILITIES AND CAPITAL

Liabilities	$591,703
Common Stock	100,000
Surplus	19,757
Total Liabilities & Capital	$711,460

While this balance sheet states a net worth of $119,757, the statement of assets upon which it depends cannot be accepted. The Accounts Receivable items of $70,208 and $21,739 respectively shown as due from the Government of Canada and the State of California represent claims which are in dispute, with Canada contending that an offset elimi-

nates any liability and California disputing the amount. The $62,307 Deferred Charges item includes $36,000 which represents a payment to the Camaero corporation for two aircraft under a purchase contract on which Overseas National defaulted. Mr. Herkimer considers this payment to have been forfeited. The $120,000 entry under Flight Equipment-Spare Engines is also questionable, inasmuch as the ownership of these engines is disputed. The $75,000 Contingent Assets item is an estimate of the amount which Overseas National will be able to obtain from Douglas Aircraft Company, Inc., General Dynamics Corporation, and Intermediate

Credit Corporation as a result of their allegedly wrongful repossession of aircraft. Thus, a total of $32,947 of the asset items in this balance sheet are of very doubtful status, and the claim of a positive net worth has little support.

Much could be said from an accounting standpoint about the propriety and method of the showing of such contingent assets on the balance sheet. However, we are here looking at these items to evaluate their effect on the financial fitness of the carrier. It is solely in the realm of speculation whether any cash will be realized from the above claims. And also solely in the realm of speculation are questions as to the amount which would be obtained if the carrier should prevail and when this would happen. These claims are too frail to lend significant support to the claim of financial fitness.

Forgetting the state of the net worth account and attempting to ascertain how Overseas National could meet the cash needs which it would experience in commencing and main-

taining operations, the outlook is gloomy indeed. The company has some $83,000 in cash, which would about meet the cash needs for disbursement prerequisite to confirmation of the plan of arrangement, i.e., approximately $60,000 (between $55,000 and $66,000) for legal, accounting, and court fees relating to the Chapter XI proceeding, $11,949 for priority taxes and governmental claims, $10,541 for priority wage claims, and $1,344 for unsecured creditors with claims of $100 or less.

Overseas National offered testimony herein by its attorney in the Chapter XI proceeding that an action has been commenced against General Dynamics Corporation involv-

21920

ing approximately $350,000 and that it is his opinion that there is substantial merit to the cause of action and a good likelihood of success. Similarly, this attorney states that an action will be instituted against Intermediate Credit Corporation for $160,000 and that this has substantial merit and a good likelihood of success. These claims relate to the repossession of aircraft from Overseas National by these companies.

The carrier's exhibits presented in evidence include no precise showing as to the cash it would need to establish operations under a certificate. However, on cross-examination, one of its witnesses, the proposed vice president of sales and operations, testified that about $200,000 new cash would be required ($20,000 for new parts, $45,000 for preoperational expenses, and $130,000 to $140,000 as a cash reserve for the first 2 months of operations). On redirect examination, he indicated that about 35 percent of this could be handled by selecting short-term credit for items of operation such as fuel. Later, its intended chairman of the board

and treasurer testified on cross-examination that a substantial amount of this could be provided in credit, and mentioned one-half as the proportion. However, this testimony on such use of credit is in quite general terms. On brief, Overseas National argues that the cash requirement would be $110,000. It must be recognized that the proposed dependence on short-term credit arrangements and the minimum cushion for contingencies would result in quite a precarious financial situation. Overseas National contends that the problem in raising the needed money is in finding the most advantageous source. It relies primarily on an argument that it will obtain a substantial amount of cash

from the claim against General Dynamics Corporation, and to a lesser extent relies on expectations of cash from actions to be commenced against Douglas and D. B. Talmage & Associates. If these fail, it plans to seek other sources. However, the record contains no showing that any such other financing can be obtained.

It can be seen that Overseas National's financial fitness depends on (1) confirmation of the plan of arrangement, and (2) success in a law suit. The proposed plan of arrangement has not been confirmed by the court, in spite of the applicant's expectation in April 1964 that the confirmation would be entered no later than June 10, 1964. On the basis of this anticipation the Board's hearing was postponed for 2 months. Thus, while the applicant states that the requisite percentage of creditors has agreed to the plan and the referee has held several hearings, the fact remains that it has not received confirmation. Furthermore, even if the

plan were to be approved, there is nowhere near a sufficient showing of financial fitness. If it prevails in the claim against General Dynamics at the trial level, further litigation is an obvious possibility. The success of the law suit and the time of recovery in the event of success are too conjectural to justify a finding of financial fitness. Accordingly, the application of Overseas National must be denied.

In view of the lack of fitness of Overseas National, the Board is faced with the problem of the further action required to effectuate its finding of a need for three charter carriers. Bureau counsel, Capitol Airways, and Seaboard

have submitted contentions herein as to what should be done, including arguments as to whether the Board should or should not reopen on the question of the need for a third carrier. However, this is a matter which is beyond the strict confines of the portion of the proceeding covering Overseas National's fitness. It involves, *inter alia*, the portions of the petitions for reconsideration of the Board's decision (orders E-20530 and E-20531) filed by unsuccessful supplemental and cargo carriers requesting that the Board certificate them in lieu of Overseas National. These petitions were deferred for action on this point by order E-20776, of April 30, 1964. Some of the unsuccessful applicants participated as to Overseas National's fitness and some did not. There is no assurance that they have been fully heard as to the Board's future action concerning their own applications. Nevertheless, the matter should be placed in a posture to enable the Board to consider the problem as soon as feasible.

Under these circumstances, it is recommended that the Board assign the proceeding for oral argument on this ques-

tion at an early date, to be at the time of argument on the fitness of Overseas National, if such be held. This will bring the matter to determination more promptly than would further filings.

On the basis of the foregoing findings and conclusions and all the record, it is recommended that the Board find that:

1. Developments since the Board's original decision have rendered Overseas National no longer financially fit to conduct transatlantic charter operations authorized under the proposed certificate for that carrier,

2. The application of Overseas National should be denied.

3. The proceeding should be assigned for oral argument at an early date on the question of further procedure appropriate in connection with the Board's previous finding that three charter carriers are needed, to be at the time of argument on the financial fitness of Overseas National, if such be held.

It is recommended that the Board adopt an order in the form set forth in the appendix.

21924

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

(Financial Fitness of Overseas National Airways, Inc.)

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That the application of Overseas National Airways, Inc., be and it is denied; and

2. That this order shall become effective on the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

.....

22609

Order No. E-21966

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 30th day of March, 1965

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

ORDER

In its original opinion of October 8, 1963, in the *Transatlantic Charter Investigation*, the Board found that the public convenience and necessity require the certification of three carriers to operate transatlantic charter services, that the supplemental air carriers rather than the cargo carriers should be selected to provide the needed services, and that Capitol Airways, Inc., Saturn Airways, Inc., and Overseas National Airways, Inc., should be awarded certificates authorizing them to engage in transatlantic charter operations. The President approved the issuance of certificates to Capitol and Saturn, but advised the Board that it should give further consideration to the question of whether events that had occurred subsequent to the time

the Board adopted its opinion had rendered ONA no longer financially fit.

Pursuant to the President's directive, the Board reopened the *Investigation* for further proceedings on the limited issue of ONA's fitness.[1] Public hearings were held before Examiner Ralph L. Wiser, who issued a recommended decision in which he found that ONA is no longer financially fit to provide the transportation authorized by the proposed certificate, and that its application should be denied.

In the light of the examiner's findings, the Board requested that the parties on brief, in addition to covering the issue of ONA's fitness, address themselves to the question of the course of action the Board should follow in the

event ONA were found to be unfit.[2]

On November 24, 1964, ONA filed a motion requesting the Board to reopen the record and receive in evidence certain agreements, contracts, and arrangements relating to the refinancing of the carrier that were entered into

---

[1] Orders E-20530 and E-20531 issued on March 3, 1964.

[2] "Notice to All Parties," November 4, 1964. Specifically, the Board raised the following questions: (a) Whether the Board should consider the certification of some other supplemental air carrier or all-cargo carrier applicant, in lieu of ONA, on the present record without further hearing; (b) whether the Board should reopen the record for further hearing on the comparative qualifications of the remaining applicants; (c) whether, if the record were reopened, the Board should permit the filing of applications by supplemental carriers not now applicants in the case and consolidate them into the proceeding; and (d) whether the Board should reconsider its prior finding that the public convenience and necessity require the certification of a third transatlantic charter carrier in addition to Capitol and Saturn.

subsequent to the close of the hearing.[3] The Board deferred action on that motion until after oral argument.

The Board has received briefs and heard oral argument.

Upon consideration of the matters presented, we have concluded that the record in the proceeding should be reopened for further hearing on the fitness and comparative qualifications of all supplemental air carrier applicants in the proceeding (including ONA), and that any supplemental air carrier who is not now a party to the proceeding should be afforded an opportunity to file an application seeking its own certification as the third transatlantic carrier, and to request its consolidation into the proceeding.

We have further concluded that the reopened hearing should include reconsideration of the question of whether the public convenience and necessity require the certification of supplemental air carriers to provide transatlantic charter service in addition to Capitol and Saturn. We also conclude that the reopened hearing should not include reconsideration of the Board's prior finding that supplemental carriers, rather than all-cargo carriers, should be authorized to provide the service.

1. It is clear that on the record before us we could not find that ONA today meets the statutory test of fitness. The examiner, in his recommended decision, outlined in detail the evidence that leads to such a conclusion and it

---

[3] Bureau counsel filed an answer in support of the motion; Modern and World filed answers in opposition. Bureau counsel also filed a motion to reopen, but subsequently requested that its own motion be dismissed contemporaneously with final action on ONA's motion.

is unnecessary to comment on or add to the matters he set forth. ONA has presented nothing that seriously challenges the correctness of the examiner's findings, and, indeed, before the Board directed its oral argument to urging that the Board grant its motion to reopen and determine its financial fitness on the basis of the recent financing arrangements not now of record.[4] It is also clear that if the Board is to give further consideration to ONA's fitness there must be further proceedings in which the new matters relied on by the carrier can be subjected to examination in an evidentiary hearing.

2. Although we could reopen the record for further hearing limited to ONA's fitness in the light of such recent data as it might submit, we are convinced that the public interest requires a broader reopening.

The Board, in reaching its original decision in the *Transatlantic Charter Investigation*, was required, as it is in all route proceedings involving competing applications, not only to determine whether the individual applicants meet the statutory test of fitness, willingness, and ability, but also to select for certification from among the "fit" applicants the carrier or carriers best qualified to provide the services found to be required. On the first point, the lengthy proceedings that have been held establish that ONA on the present record is not fit and that if we are again to give consideration to its fitness, we must hold further hearings. We do not speculate on what the record in any further proceedings that might be held would estab-

[4] Although ONA filed exceptions to the examiner's recommended decision, these were largely conclusionary in nature. The carrier did not file a brief to the Board, but relied on its brief to the examiner.

lish as to ONA's present fitness. However, there obviously can be no assurance that the record would warrant a finding that ONA is now fit. Thus, a reopening limited to ONA's fitness would necessarily entail the risk that the carrier would be found unfit, which would require another round of proceedings of some type with respect to selection of any carrier needed to provide transatlantic charter service.

Equally important, even if the evidence were to establish that the carrier is now fit, the Board would nonetheless be faced with a situation on comparative fitness significantly different from that before it when it chose ONA for certification. In substantial part, the Board selected ONA because of its previous experience and historic participation in the transatlantic charter market. However, as a consequence of its financial difficulties, ONA has largely disbanded its organization, has not conducted a flight of any kind since October 3, 1963, and has devoted its efforts to conserving or disposing of its assets.[6]

22612

In view of the foregoing, we will reopen the proceeding and broaden the issues to make possible an evaluation of the current fitness and comparative qualifications of all supplemental carrier applicants in the proceeding. We need not decide whether we could select some applicant other than ONA on the present record without further hearings. A substantial period of time has elapsed since the original hearings were held, and we believe that the public interest will best be served by setting the reopened proceeding for further hearings before an examiner of the

[6] We are aware that the documents attached to ONA's motion indicate that the former president of ONA will be retained in that capacity. This does not affect the validity of the conclusion we have reached.

Board for the development of an up-to-date evidentiary record. Consistent with our objective of choosing for any transatlantic services found needed a supplemental carrier or carriers whose selection, on the basis of current data, will best serve the public interest, we will permit any supplemental carrier that is not now a party to the investigation to participate in the reopened proceeding and have its current qualifications evaluated along with those of the other applicants. The new matters alleged by ONA in support of its motion warrant affording that carrier the opportunity being accorded the other supplemental carriers to participate in the reopened proceeding and present evidence directed to establishing that it is now fit and should be selected.[6]

3. The same considerations lead us to reopen the issue of whether the public convenience and necessity require the certification of carriers in addition to Capitol and Saturn to provide transatlantic charter service. In view of the elapsed time since the original hearings and since the public interest requires reexamination of the question of choice of carrier, we believe that the public interest would best be served by bringing the record up to date on the public convenience and necessity issue. This will enable the Board to render its decision and submit its recommendation to the President on the basis of a record which is current in all respects.

On the other hand, we find no basis for reexamining our prior determination that the supplemental air carriers, rather than the all-cargo carriers, should be selected to provide transatlantic services. The choice as between the

[6] In its motion, ONA requested that the Board reopen the record and receive in evidence the documents attached to the motion. The admissibility of the documents ONA desires to offer is a matter that should be left for determination by the hearing examiner assigned to the case.

supplemental and all-cargo carriers was fully litigated by the parties and was carefully considered by the Board in reaching its decision. The Board's conclusion rested in major part on its policy determination that since Public Law 87-528 restricted the supplemental carriers to charter operations they should be chosen, in preference to the cargo carriers, to provide service in the transatlantic charter market. No new matters have been presented that, in our judgment, would warrant further examination of that determination.

22613

ACCORDINGLY, IT IS ORDERED:

1. That the record in the *Transatlantic Charter Investigation* be and hereby is reopened for further proceedings on (a) the current fitness and comparative qualifications for selection as transatlantic charter carriers of all supplemental air carriers (including ONA) who are now applicants in the proceeding; (b) whether the public convenience and necessity require the certification of supplemental air carriers to provide transatlantic charter service in addition to Capitol and Saturn;

2. That any supplemental air carrier who is not now an applicant in the proceeding be and hereby is granted permission to file on or before the prehearing conference in the reopened proceeding an application seeking its certification as a transatlantic charter carrier and a motion to consolidate such application into the reopened proceeding;

3. That the reopened proceeding be set for hearing before a hearing examiner of the Board at a time and place to be hereafter designated;

4. That the motion of ONA, except to the extent that the foregoing action constitutes a grant thereof, and the various requests for further consideration of the Board's prior determination that the supplemental air carriers rather than the cargo carriers should be chosen to provide transatlantic charter services, be and hereby are denied;

5. That the motion of Bureau Counsel be and hereby is dismissed;

6. That a copy of this order shall be served on all supplemental air carriers.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

MEMBER GILLILLAND COMMENTED AS FOLLOWS:

I concur that the record should be reopened for further proceedings for the reasons set forth in the Board's decision. Additionally, I would reexamine the issue of whether the all-cargo carriers should be selected to provide the proposed transatlantic services, if a need exists for such services.

/s/ WHITNEY GILLILLAND

VICE CHAIRMAN MURPHY FILED THE ATTACHED DISSENT.

22614

MURPHY, VICE CHAIRMAN, DISSENTING:

As a result of the then increasing transatlantic charter market, the Board, in 1955, issued its first transatlantic charter policy statement purporting to set forth a comprehensive regulatory approach to such operations. (20

C. A. B. 782) Transatlantic charters were authorized on an individual flight basis at that time for supplemental and all-cargo carriers in addition to the charter operations of the U. S. flag and foreign air carriers who hold transatlantic charter authority as part of their certificate and permit grants. As the volume of charters continued to increase, it became apparent that a formal proceeding to determine whether a more permanent authorization of transatlantic charter service by carriers not possessing certificated route authority was required and the Board instituted the instant proceeding to consider that question in November 1960. After full hearing and extensive proceedings, the Board in October 1963 concluded that the public convenience and necessity required certification of three additional carriers to operate transatlantic charter services, that supplemental carriers should be selected to provide the needed services and that Capitol, Saturn and

22615

Overseas National should be awarded transatlantic charter certificates.[1]

Now at this late stage, after having considered and decided the difficult and long-standing issues in this case, having engaged in a full rehearing as to ONA and against the background of continuing great growth in the transatlantic charter market, the Board has decided to reopen the entire question of need for any certificated transatlan-

[1] The President approved issuance of certificates to Capitol and Saturn but because of ONA's bankruptcy subsequent to submission of our decision to the President, he returned that issue for further Board review. Further proceedings on the ONA issue have been held and that matter as well as the petitions for reconsideration of the October 1963 decision are still pending and are ripe for final disposition.

tic charter operator or operators in addition to Saturn and Capitol. I perceive no reason whatsoever why the remaining issues in this already protracted and costly proceeding—essentially whether the Board should affirm on reconsideration its prior decision to certificate three supplementals to provide transatlantic charter service—should not be decided now. It is well to note that the majority's broadscale reopening on already decided public convenience and necessity issues is a far different matter from a grant of ONA's limited request for a second reopening on its fitness alone which I would not necessarily oppose. A favorable ruling on ONA's limited request, however, does not warrant the Board's present action which constitutes a virtual institution of a new case with new parties and a discarding of our recent findings of public convenience and necessity.

22616

This case should be brought to a conclusion.[2] There is no indication that the present record is inadequate or stale or that an updating would contribute any facts contradicting our prior conclusions.[3] I am convinced that further drawn-out and expensive hearings in this already comprehensive proceeding will serve no public interest purpose.

/s/ ROBERT T. MURPHY

---

[2] It should be recalled that in its February 6, 1962 order upholding seasonal exemptions authorizing supplemental and all-cargo carriers to provide transatlantic charter services while this case was in process, the Circuit Court of Appeals for the District of Columbia "urged that those proceedings be speedily concluded." 300 F. 2d 904.

[3] The number of charters is increasing; over 70% of the business is moving on foreign carriers, and four carriers have already asked the Board for special authority to provide transatlantic charter services this summer.

(22954)

22954

Order No. E-22255

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Issued under delegated authority
June 1, 1965

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

ORDER GRANTING AND DISMISSING PETITIONS FOR LEAVE TO INTERVENE

Petitions for leave to intervene in the above-entitled proceeding have been filed by the American Society of Travel Agents, Inc., Caledonian Airways (Prestwick) Ltd., Capitol Airways, Inc., and Saturn Airways, Inc.

The American Society of Travel Agents and Caledonian have indicated a lack of interest in the proceeding unless the matter of all-expense tour authority or other change of Part 295 of the Board's Economic Regulations should be at issue. The examiner ruled at the prehearing conference that changes in the terms, conditions, and limitations of transatlantic supplemental air transportation from that heretofore determined by the Board, including provision

of all-expense tours or any other amendment of Part 295 are not at issue under the Board's order reopening the proceeding.

Pursuant to authority duly delegated by the Board in its Regulations, 14 CFR 385.11, it is found, upon consideration of these petitions, that the intervention of Capitol Airways, Inc., and Saturn Airways, Inc., will be conducive to the ends of justice and will not unduly impede the Board's business.

ACCORDINGLY, IT IS ORDERED:

1. That the petitions for leave to intervene filed by the American Society of Travel Agents, Inc., and Caledonian Airways (Prestwick) Ltd., be and they hereby are dismissed.

2. That the petitions for leave to intervene filed by Capitol Airways, Inc., and Saturn Airways, Inc., be and they are hereby granted.

22955

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is

(22955, 27329)

filed, or the Board gives notice that it will review this order on its own motion.

By RALPH L. WISER
Hearing Examiner

HAROLD R. SANDERSON
Secretary

(SEAL)

27329

CAB Docket No. 11908

WORLD AIRWAYS EXHIBIT NO. R-1

• • • • •

D. *Average Length of Stay*

1. The average length of stay in Europe during 1964 was *41 days*. While this was down from the *45 day* average of 1963, reflecting the influence of 14-21 excursions, the average stay remains appreciably longer than the excursion fare allows.[5]

[5] The Department of Commerce does not isolate the length of stay of air passengers as distinguished from ship passengers. However, over 82.7% of all passengers went via air.

PERCENTAGE DISTRIBUTION OF PASSPORT RECIPIENTS INDICATING EUROPE AS THEIR FIRST AREA DESTINATION FOR MAJOR METROPOLITAN AREAS - 1963 AND 1964

Residence	1964 Total	1964 Europe	1964 % Europe of Total	1963 Total	1963 Europe	1963 % Europe of Total
TOTAL PASSPORT RECIPIENTS	1,133,228	864,598	76.3	1,055,504	794,964	75.3
NEW YORK CONSOLIDATED AREA						
NEW YORK CITY: AIR & SHIP	221,710	180,100	81.2	217,170	175,960	81.0
Air	201,510	162,670	80.7	183,230	145,780	79.6
NEWARK: AIR & SHIP	29,810	25,460	85.4	39,880	33,120	83.0
Air	26,880	22,720	84.5	32,820	26,620	81.1
PATTERSON; CLIFTON-Passaic: AIR & SHIP	4,150	3,610	87.0	4,030	3,190	79.2
Air	3,740	3,230	86.4	3,250	2,590	79.7
LOS ANGELES-LONG BEACH: AIR & SHIP	71,080	48,220	67.8	74,310	48,280	65.0
Air	64,820	43,820	67.6	63,360	40,640	64.1
CHICAGO: AIR & SHIP	57,900	48,260	83.4	52,380	42,430	81.0
Air	52,480	43,340	82.6	44,600	35,390	79.3
WASHINGTON,D.C.: AIR & SHIP	37,260	27,030	72.5	41,350	29,030	70.2
Air	33,570	24,010	71.5	35,750	24,340	68.1
BOSTON: AIR & SHIP	25,720	22,090	85.9	36,490	30,990	84.9
Air	22,980	19,570	85.2	30,190	25,230	83.6
SAN FRANCISCO-OAKLAND: AIR & SHIP	29,510	17,340	58.8	35.340	21,200	60.0
Air	26,460	15,350	58.0	29,480	17,440	59.2
DETROIT: AIR & SHIP	24,990	20,510	82.1	21,610	17,890	82.8
Air	22,840	18,550	81.2	18,670	15,200	81.4
PHILADELPHIA: AIR & SHIP	19,670	16,180	82.3	15,400	12,770	82.9
Air	17,730	14,460	81.5	12,520	10,150	81.1
MILWAUKEE: AIR & SHIP	14,580	11,820	81.1	10,540	8,340	79.1
Air	13,150	10,550	80.2	8,860	6,900	77.9
MINNEAPOLIS-ST. PAUL: AIR & SHIP	12,700	10,010	78.8	12,690	9,930	78.3
Air	11,330	8,900	78.6	10,830	8,320	76.8
SEATTLE: AIR & SHIP	10,850	7,590	70.0	11,470	7,520	65.6
Air	9,650	6,650	68.9	9,700	6,260	64.5

27252

957a

(27252)

PERCENTAGE DISTRIBUTION OF PASSPORT RECIPIENTS INDICATING EUROPE AS THEIR FIRST AREA DESTINATION FOR MAJOR METROPOLITAN AREAS - 1963 AND 1964

Residence	1964 Total	1964 Europe	1964 % Europe of Total	1963 Total	1963 Europe	1963 % Europe of Total
DALLAS: AIR & SHIP	4,890	3,500	71.6	4,900	3,480	71.0
Air	4,600	3,270	71.1	4,420	3,090	69.9
BUFFALO: AIR & SHIP	4,780	4,010	83.9	2,480	1,880	75.8
Air	4,210	3,520	83.6	2,090	1,540	
SAN DIEGO: AIR & SHIP	4,630	2,610	56.4	3,470	1,860	73.7
Air	4,220	2,390	56.6	2,910	1,580	54.3
CINCINNATI: AIR & SHIP	4,200	3,380	80.5	4,030	3,150	78.2
Air	3,760	2,970	76.3	3,380	2,610	77.2
ST. LOUIS: AIR & SHIP	5,110	4,000	78.3	4,810	3,730	77.5
Air	4,510	3,450	76.5	3,820	2,880	75.4
KANSAS CITY: AIR & SHIP	6,260	4,790	76.5	8,820	6,430	72.9
Air	5,700	4,300	75.4	7,750	5,550	71.6
ATLANTA: AIR & SHIP	3,750	2,910	77.6	3,910	2,990	76.5
Air	3,220	2,380	73.9	3,210	2,360	73.5
NEW ORLEANS: AIR & SHIP	3,480	2,240	64.4	3,470	2,300	66.3
Air	3,170	1,980	62.5	2,910	1,810	63.2

Source: U.S. Dept. of State, Bureau of Security and Consular Affairs, Passport Office.

(27253)

27253

958a

27352

WORLD AIRWAYS EXHIBIT NO. R-7

ONLY 15% OF THE TOTAL TRANSATLANTIC TRAFFIC WOULD BE LIKELY TO USE THE ITINERARIES SHOWN IN PA-73

Number of European Countries Visited by U. S. Resident Transatlantic Air Passengers—1962

(Rebuttal to PA-73)

Number of Countries Visited	Total Passengers		
	Number in Sample	Percent of Total	Cumulative Percent
1	447	21.2	100.0
2	396	18.9	78.7
3	289	13.7	59.9
4	302	14.3	46.2
5	229	10.9	31.9
6 (PA-73 Example 1)	166	7.9	21.0
7 (PA-73 Example 2)	144	6.8	13.1
8	71	3.4	6.3
9	30	1.4	2.9
10	13	.6	1.5
11	5	.2	.9
12	13	.6	.7
13	3	.1	.1
Total	2,108	100.0	
Average No. of Countries Visited	3.6		

Source: PA #477, Docket #13577.

Order No. E-22686

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 23rd day of September, 1965

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

ORDER

In its original opinion of October 8, 1963,[1] in this case, the Board determined to award transatlantic charter certificates to Capitol Airways, Inc. (Capitol), Saturn Airways, Inc. (Saturn), and Overseas National Airways, Inc. (ONA). At the same time, the Board denied various other applications, including requests for authority to charter to tour operators conducting all-expense tours. On February 18, 1964, the President approved the Board's decision only with respect to the award of transatlantic charter certificates to Capitol and Saturn, and he requested that the

[1] See Appendix A to Orders E-20530 and E-20531.

Board make a further evaluation of the fitness of ONA.[2] The President did not dispose of the Board's denial of the various other requests in the case, including the issue of all-expense tours. Accordingly, the Board treated as premature requests for reconsideration of its denial of all-expense tour authority (Order E-20776, April 30, 1964).

28300

Two years have now passed since the Board's original determination to deny all-expense tour authority to Capitol and Saturn. In the interval there have been significant changes in the facts relating to the financial position of the U. S. flag carriers, as well as major improvements in transatlantic traffic, both of which may have an important bearing on the all-expense tour issue. In addition, the Board will shortly have presented to it, in the *Supplemental Air Service Proceeding,* Docket 13795 *et al.,* the question of whether supplemental carriers should be granted all-expense tour authority in all markets other than the transatlantic market. Therefore, the Board now deems it appropriate to reexamine the question of whether the supplemental air carriers certificated to serve the transatlantic passenger market should be awarded all-expense tour authority.

---

[2] Pursuant to the President's directive the Board reopened the proceeding on the limited issue of ONA's fitness. (Orders E-20530 and E-20531 issued on March 3, 1964). A full evidentiary hearing was held and the Board then, for the reasons set forth in Order E-21966, March 30, 1965 expanded the issues and reopened the record for further proceedings on the current fitness and comparative qualifications of all supplemental carriers who are applicants for transatlantic charter authority in the case and to determine whether the public convenience and necessity require certification of supplemental air carriers to provide transatlantic charter service in addition to Capitol and Saturn. This proceeding is currently in process, hearings having recently been completed.

(28300, 28301)

In order to facilitate decision on this matter the Board will accept briefs from the interested parties and an oral argument will subsequently be held. The briefs should, in particular, include discussion of the following matters:

1. Is the present record adequate for determining the all-expense tour issue or must the Board reopen the record to take further evidence?

2. May the Board, by incorporation by reference, official notice, or other methods lawfully utilize the evidentiary record in the *Supplemental Air Service Proceeding,* Docket 13795 *et al.,* and, if so, should the Board do so for the purpose of reaching a decision in this reopened proceeding?

ACCORDINGLY IT IS ORDERED THAT:

1. The *Transatlantic Charter Investigation,* Docket 11908 *et al.* be and it hereby is reopened to determine whether the public convenience and necessity require the grant of all-expense tour authority to Capitol, Saturn, and any supplemental air carrier subsequently certificated in the reopened proceeding now in progress;[3]

2. Briefs to the Board in this reopened proceeding shall be filed on October 8, 1965;

3. An oral argument in this reopened proceeding shall be held at a time and a place to be hereafter designated; and

28301

4. This order shall be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

[3] See Fn. 1, *Supra.*

28389

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C. 20428

Docket No. 11908, *et al.*

In the Matter of the

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

BRIEF OF PAN AMERICAN WORLD AIRWAYS, INC. PURSUANT TO ORDER E-22686

HUBERT A. SCHNEIDER
ELIHU SCHOTT
Attorneys for
Pan American World Airways, Inc.
Pan Am Building
New York, New York 10017

Dated: October 7, 1965
New York, New York

(28390)

28390

TABLE OF CONTENTS

Page

PART I.—THE BOARD MAY NOT LAWFULLY AUTHORIZE SUPPLEMENTAL AIR CARRIERS TO PROVIDE ALL-EXPENSE TOUR CHARTERS TO TRAVEL AGENTS ..... 2.

A. "Charters" by supplementals to travel agents who sell individual space to the general public as part of an all-expense tour, are not valid "charter trips in air transportation" under Section 101(33) of the Act ..... 4.

1. Any air service wherein individual space is sold to the general public violates the standards for a valid "charter" established by the Court of Appeals for the District of Columbia in the recent *American* case ..... 4.

2. The legislative history of Public Law 87-528 demonstrates a specific Congressional intent to withhold any authority from the supplemental air carriers permitting all-expense tour charters to travel agents ..... 8.

B. "Charters" by supplemental air carriers to travel agents who, in turn, simply sell to the public at large the same type of all-expense tours presently offered and vigorously promoted by both travel agents and scheduled carriers, are not "supplemental air transportation" under Section 101(33) of the Act ..... 11.

(28390, 28391, 28415)

Page

C. All-expense tours constitute a "special service" and are thus outside the authority which may be granted to supplemental air carriers ..... 15.

28391

PART II.—THE PRESIDENT APPROVED THE BOARD'S DENIAL OF AUTHORITY TO CHARTER TO TOUR OPERATORS ..... 19.

PART III.—THE PRESENT RECORD FULLY SUPPORTS THE BOARD'S DENIAL OF ALL-EXPENSE TOUR AUTHORITY AND THE BOARD SHOULD NOT REOPEN THE RECORD TO TAKE FURTHER EVIDENCE ..... 23.

PART IV.—THE BOARD SHOULD NOT AND MAY NOT UTILIZE THE EVIDENTIARY RECORD IN THE SUPPLEMENTAL CASE ..... 26.

CONCLUSION ..... 28.

CERTIFICATE OF SERVICE ..... 29.

28415

* * * * *

The second portion of the Board's question—"must the Board reopen the record to take further evidence"—is somewhat obscure. In the light of the foregoing discussion, it is clear that there is no deficiency of evidence to support the determination which the President has already approved. On the other hand, should the Board decide to reexamine its

conclusion on that issue, it certainly must have further evidence before it could justify a different recommendation to the President. Further, it must have evidence on both sides of the question. For example:

a) Events subsequent to the Board's first decision have made clear the serious foreign relations implications of, and complications from, any authorization of supplemental air carriers to operate all-expense tours, but these facts are not in the record.

b) The Board must have full and up-to-date evidence on the effect of any such award on the United States balance of payments problem—a subject which was not even considered in the earlier hearings or decision, because it had not yet been recognized as a critical national problem.

28416

c) The Board must also have evidence on the continued reductions in fares on scheduled services, and on the adverse effect on that continuing trend (and on the well-being of the scheduled carriers) of the massive diversion threatened by authorizing supplemental air carriers to provide all-expense tours.

d) To the extent that any alleged "need" of the supplemental air carriers may be considered relevant, the Board could not grant them all-expense tour authority without further evidence on their high profits and excellent financial condition.

These subjects, we should add, are only illustrative.

We urge the Board to deny the petitions for reconsideration and close out this issue in this proceeding once and for

all. But if it should determine to reexamine it further, we believe it would be a mistake, and an abuse of discretion, to do so by reopening the record in this proceeding.

The Board may not be fully aware of how very complex and unwieldy this proceeding and its record have become. There have already been three separate hearings. Only the first of these, concluded in April 1962, took evidence on the all-expense tour issue. Some of the original applicants did not even petition for reconsideration of the denial of all applications for such authority. Later admitted applicants had not even been heard on this issue. The record itself is massive and disconnected. Indeed, the point has been reached where it is mechanically and physically difficult to search the record, or even to refer to it. The transcript of

28417

oral testimony in *each* of the three separate hearing phases begins with page 1—for a total of 5,346 pages. There are thousands of pages of exhibits, in dozens of scattered volumes. Much of this enormous record relates to issues which have already been finally decided, or to applicants no longer in the case.

Clearly, if the Board should conclude that it is now appropriate at this late stage to reexamine the question of whether the supplemental air carriers certificated to serve the transatlantic passenger market should be awarded all-expense tour authority, it should first close out this proceeding and institute a new one in which to conduct such a reexamination.

* * * * *

(28442)

28442

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON 25, D. C.

Docket 11908 *et al.*

In the matter of the

REOPENED TRANSATLANTIC
CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

BRIEF OF TRANS WORLD AIRLINES, INC. TO THE CIVIL AERONAUTICS BOARD

Chadbourne, Parke, Whiteside & Wolff
Attorneys for
Trans World Airlines, Inc.
25 Broadway
New York, N. Y. 10004

Edmund E. Harvey,
Joseph F. Healy, Jr.,
Of Counsel.

Dated: October 8, 1965

28443

INDEX

		Page
I.	INTRODUCTION	1
II.	THE BOARD MAY NOT LAWFULLY AWARD ALL-EXPENSE TOUR AUTHORITY TO SUPPLEMENTAL AIR CARRIERS	2
III.	THE PRESENT RECORD IS INADEQUATE FOR ANY MEANINGFUL RE-EVALUATION OF THE BOARD'S ORIGINAL DETERMINATION THAT ALL-EXPENSE TOUR AUTHORITY SHOULD BE DENIED	6
	1. The possible international problems arising from such a major expansion of the authority held by the U. S. transatlantic charter carriers	10
	2. The possible adverse effect on the U. S. balance of payments position of the authorization of transatlantic all-expense tour charters	11
	3. The travel agent's role as an indirect air carrier in the promotion and sale of all-expense tours and the need for authority from, and regulation by, the Board in this area	12
IV.	THE BOARD MAY NOT UTILIZE THE EVIDENTIARY RECORD OF THE SUPPLEMENTAL AIR SERVICE PROCEEDING IN THIS CASE	13
	CONCLUSION	15

28470

* * * * *

TWA submits that if there is any need at all to reexamine the earlier conclusion of both the Board and the Examiner who heard the evidence, and if this is to be done two full years after the Board reached its original conclusion and some three years after the close of the evidentiary record (which, in turn, consists of facts and data relating to yet an earlier period), then there must be a presumption that the present record will be inadequate for any fair or meaningful re-evaluation of the question. Even assuming that the "present record" here includes all of the "traffic, costs, revenue, and other information typically stipulated or noticed by the Board in route proceedings," it has only recently been held that "further hearings are required to adequately assess the full significance of these data." (*Transpacific Route Case,* Order E-22625, September 3, 1965, pp. 2-3). Consistency and sound procedure demand the same results here.

As the Board further noted in its *Transpacific* order (following an extended discussion of the mass of stipulated data and the possible interpretation thereof):

> "The full import of these and other matters, however, could in our judgment only be soundly decided after

28471

> further evidentiary hearings at which the parties would have full opportunity to present evidence and cross examine. We conclude, therefore, that the record in the proceeding should be reopened for further evidentiary hearings based on the changes in fact which

have occurred and the need to bring the evidentiary record up to date." (Order E-22625, pp. 7-8)

Nor is such action required merely in the sound exercise of the Board's discretion; the courts have held that if the Board is to open the door to new data, it must take a full look and allow the affected parties an opportunity to rebut and explain the more recent developments. *Northeast Airlines* v. *CAB*, 345 F.2d 484 (1st Cir. 1965).

The reopening of cases for further evidentiary hearings have been common. In addition to the *Transpacific Route Case*, such a reopening was ordered following judicial remand of certain portions of the *New England Regional Airport Investigation* (see Order E-22339, June 22, 1965) and following the above-cited remand by the First Circuit of the *New York-Florida Renewal Case* (see Order E-22084, April 26, 1965). The same procedure was earlier followed upon remand of portions of the decision in *Southern Transcontinental Service Case* (see Order E-20129, October 28, 1963). And even where a full rehearing on all issues has not been ordered, the Board has considered it necessary to reopen the record for evidentiary hearings limited to new factual allegations which have come to its attention

(see *Pacific Northwest Local Service Case*, 29 C.A.B. 660, 678-79 (1959)).

Perhaps the most compelling precedent of all for the position that further proceedings are needed on the all-expense tour issue is the fact that the Board itself, earlier in this very case, deemed it necessary to order further evidentiary hearings as part of its reexamination of an-

(28472, 28473)

other aspect of the original decision (Order E-21966, March 30, 1965, p. 4):

> "We need not decide whether we could select some applicant other than ONA on the present record without further hearings. A substantial period of time has elapsed since the original hearings were held, and we believe that the public interest will best be served by setting the reopened proceedings for further hearings before an examiner of the Board for development of an up-to-date evidentiary record. . . .
>
> ". . . In view of the elapsed time since the original hearings and since the public interest requires re-examination of the question of choice of carrier, we believe that the public interest would best be served by bringing the record up to date on the public convenience and necessity issue. This will enable the Board to render its decision and submit its recommendation to the President on the basis of a record which is current in all respects."

These same considerations obviously apply to the all-expense tour issue and it would be completely arbitrary for the Board to proceed in a different manner with respect thereto.

Quite apart from the matter of the stale nature of the evidentiary record, there are several important areas which must be thoroughly explored if the Board if to give further serious consideration to the authorization of all-

expense tour charters. These include:

1. *The possible international problems arising from such a major expansion of the authority held by the U. S. trans-*

atlantic charter carriers. The Bureau of Economic Regulation has adverted to the growing difficulties encountered with foreign governments in the matter of landing and up-lift rights for charter services, as well as other restrictive practice such as their refusal to permit split charters, their refusal to allow charter flights which do not comply with IATA regulations (even though they comply with Part 295), and so forth.*

While the Bureau stated in its brief to the Examiner in the *Reopened Transatlantic Charter* case that "[t]o deliberately ignore the international problems relating to such certification is to abdicate a primary Board function as advisor to the President", it failed to rise to the obvious implication of its position and suggest that a full scale exploration of these matters is required. Such an evidentiary investigation will certainly be required here if the President is to be adequately informed of the implications

28474

of any all-expense tour authorization proposed.

Matters of this sort are commonly considered in the course of international route proceedings—often through the medium of an executive session. In fact, the *reopening* of a proceeding for full scale hearings devoted expressly to matters affecting international relations was ordered by the Board in the *Transpacific Route Case,* 34 C.A.B. 106, 109-110 (1961). The same action can and should be taken here.

---

* Brief of the Bureau of Economic Regulation to the Examiner, filed in the *Reopened Transatlantic Charter Investigation* on September 13, 1965, pp. 36-38; see also Brief of the Bureau of Economic Regulation to the Civil Aeronautics Board, filed in the *Supplemental Air Service Proceeding* on September 27, 1965, pp. 10-12.

(28474, 28475)

2. *The possible adverse effect on the U.S. balance of payments position of the authorization of transatlantic all-expense tour charters.* The efforts to alleviate the balance of payments deficit through such devices as the "Discover America" program are well known. Less well known —indeed, not established at all on this record—is the effect that all-expense tour charters across the Atlantic would have on the gold flow problem. Proponents of all-expense tour charters will no doubt urge that they will generate substantial new low-cost air travel. If this is so, then the balance of payments will be adversely affected since, as is shown by the recent CAB staff study "The Impact of the Balance of Payments of the Air Transport and Aircraft Industries", travel abroad by U.S. residents always contributes to the payments deficit whether or not U.S.-flag or foreign-flag carriers are used. The extent of this ad-

28475

dition to the total U.S. deficit can only be determined in the course of an evidentiary hearing on the matter.

3. *The travel agent's role as an indirect air carrier in the promotion and sale of all-expense tours and the need for authority from, and regulation by, the Board in this area.* The record in this case is totally devoid of any evidence on the vital question of how, when and where the travel agent, as the principal who would organize, promote and sell these tours to the public, is to offer and perform this service. And there clearly is no basis in the record for any grant of the necessary authorization for these agents to act as indirect air carriers; there are, of course, no applications for such authority being heard in this case. The rule making proceeding in Docket 15777

(SPDR-6) cannot supply this deficiency for the obvious reason, among others, that it does not even purport to apply to international air transportation. Since an all-expense tour charter program is an integrated whole involving the supplemental air carrier, on the one hand, and the travel agent, on the other, the issues raised thereby must properly be evaluated in a single proceeding. Nothing in the present record would even remotely permit this to be done here.

Thus we see that in addition to bringing the old record up to date, there are matters of fundamental importance

which must first be explored in an evidentiary proceeding if the Board is to have an adequate record upon which to base a determination as to whether the supplemental air carriers certificated in the transatlantic passenger market should also be awarded all-expense tour authority.

(28743)

28743

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

ERRATA SHEET

to RECOMMENDED DECISION SERVED DECEMBER 22, 1965

The following changes should be made in the above-referenced recommended decision:

Page	*Line*	*Correction*
5	6th line	Change "$20,751,000" to "$21,751,000".
5	10th line	Change "September" to "October".
7	3d line	Change "5,547" to "15,547".
7	8th line	Change "18,744" to "18,474".
10	6th line from bottom of page	Change "*from* that of 1964" to "*below* that of 1964"
11	8th line from bottom of page	Change "12,664" to "12,264".
12	12th line	Change "February *15*" to "February *14*".

Page	*Line*	*Correction*
13	14th line	Change "$11 million" to "$17 million".
16	3d line	Change "753,000" to "753,500".
18	12th line	Delete "eastbound".
19	9th line	After "total", insert "traffic".
24	14th line	At end of line, delete comma.
26	footnote 21, 2d sentence	Change "24.4%" to "26.4%".
27	9th line	Change "8" to "9".
27	10th line	Change "9" to "10".
27	4th line from bottom of page	Change "$236,045" to "$206,914".

28744

27	5th line from bottom of page	Delete "transport".
31	12th line	Change "Ernest" to "Emmet".
31	next-to-last line	Change "$374,000" to "$374,500".
32	5th line	Change "Douglas" to "Greyhound".
32	4th line from bottom of page	Change "$4,851,000" to "$4,851,599".
33	1st line	Change "DC-8F-54" to "DC-8F".
34	next-to-last line	Change "$178,426" to "$177,334".
35	next-to-last line	After "75", insert "percent".

(28744)

Page	*Line*	*Correction*
38	17th line	Change "$7,928,408" to "$7,935,730".
40	11th line	Insert "previously" at beginning of line.
A-8	Under "TIA"	Change No. of revenue miles from "1,626,540" to "1,622,540".
A-9	Under "USOA"	After total operating expense and net operating profit figures, add "[3]".
A-9	Bottom of page	*Add footnote*: "[3] This includes an allowance for USOA's estimate of $80,000 "other income. The carrier also expects $100,000 income from a wholly owned subsidiary, making its estimated gross income a total of $396,291."
A-12	Last line	After "Board", add "and exhibits of ONA and USOA".

/s/ RALPH L. WISER

Ralph L. Wiser
Hearing Examiner

January 11, 1966

28748

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

RECOMMENDED DECISION OF RALPH L. WISER,
HEARING EXAMINER

Served: 22 Dec 1965

Upon:

Robert M. Beckman, 703 Ring Bldg., Washington, D. C. 20036, for American Flyers Airline Corporation.

Theodore I. Seamon, 700 Woodward Bldg., Washington, D. C. 20005, for Capitol Airways, Inc.

Albert F. Beitel, 905 American Security Bldg., Washington, D. C. 20005, for Modern Air Transport, Inc.

Howard S. Boros, 711—14th St., N. W., Washington, D. C. 20005, for Overseas National Airways, Inc.

David L. Steege, Pan American World Airways, Inc., Pan Am Bldg., 200 Park Ave., New York, N. Y. 10017, for Pan American World Airways, Inc.

Robert M. Lichtman, 1000 Ring Bldg., Washington, D. C. 20036, for Saturn Airways, Inc.

Clayton L. Burwell, 720 Federal Bar Bldg., 1815 "H" St., N. W., Washington, D. C. 20006, for Trans International Airlines, Inc.

(28748, 28749)

Edmund Harvey, Chadbourne, Parke, Whiteside & Wolff, 25 Broadway, New York, N. Y. 10004, for Trans World Airlines, Inc.

Chapman, Friedman, Shea, Clubb and Duff, Pennsylvania Bldg., Washington, D. C. 20004, for United States Overseas Airlines, Inc.

Raymond J. Rasenberger, 888—17th St., N. W., Washington, D. C. 20004, for World Airways, Inc.

James H. French, 1625 "K" St., N. W., Washington, D. C. 20006, for Zantop Air Transport, Inc.

James Lawrence Smith, Civil Aeronautics Board, Washington, D. C. 20428, for the Bureau of Operating Rights (formerly Bureau of Economic Regulation).

John A. Wallace, The Experiment in International Living, Putney, Vermont, for The Experiment in International Living.

Exceptions, if any, must be filed with the Docket Section of the Civil Aeronautics Board, Washington, D. C. 20428, and served upon all parties within 10 days of service shown above. Briefs may be filed and served on all parties within 20 days after the date fixed for filing exceptions.

28749

Appearances:

Robert M. Beckman and *Louis P. Haffer* for American Flyers Airline Corporation.

Theodore I. Seamon and *Lawrence D. Wasko* for Capitol Airways, Inc.

Albert F. Beitel and *William A. Wildhack, Jr.,* for Modern Air Transport, Inc.

C. Booker Powell, Stephen D. Potts, and *Howard S. Boros* for Overseas National Airways, Inc.

Jerry W. Ryan and *David L. Steege* for Pan American World Airways, Inc.

Robert M. Lichtman for Saturn Airways, Inc.

Clayton L. Burwell and *Walter D. Hansen* for Trans International Airlines, Inc.

Joseph Healy, Jr., Edmund Harvey, and *John S. Samuels* for Trans World Airlines, Inc.

Theodore P. Gerth, Judah Best, Albert A. Dorn, John J. Klak, Arnold J. Rotman, and *Chapman, Friedman, Shea, Clubb and Duff* for United States Overseas Airlines, Inc.

Jerrold Scoutt, Jr., and *Raymond J. Rasenberger* for World Airways, Inc.

James H. French, Robert J. Wilson, and *George C. Davis* for Zantop Air Transport, Inc.

James Lawrence Smith and *Howard G. Feldman* for the Bureau of Operating Rights (formerly Bureau of Economic Regulation).

John A. Wallace for The Experiment in International Living.

28750

CONTENTS

Subject	*Page*
Preliminary statement	1
Positions of the parties	3
Characteristics of the transatlantic charter market	4
The demand for jet aircraft and the rejection of piston aircraft	5
Operations of Part 295 carriers	7
Adequacy of presently authorized service	7

(28750, 28751)

Subject	*Page*
The future transatlantic charter market	16
Effect of additional services on existing carriers	20
The balance of payments	23
Difficulties in negotiating with foreign governments	24
Qualifications—General	26
American Flyers	27
Modern	28
ONA	29
TIA	32
USOA	33
World	36
Zantop	37
Conclusions	38
Ultimate conclusions	41
Recommendation	44
Appendixes:	
1 Transatlantic passenger charter traffic, 1963-1965	A-1
2 Yearly increases of total transatlantic charter passengers, 1957-1965	A-2
3 Monthly total transatlantic charter traffic, IATA and Part 295 carriers, 1963-1965	A-3
28751	
4 History and distribution of peak season pro rata traffic, 1957-1964	A-4

	Subject	*Page*
5	Trend of total air travelers between the United States and Europe, 1957-1967	A-5
6	Applicants' forecast of transatlantic charter passengers	A-6
7	Summary of applicants' operating proposals for 1966	A-7
8	Projected transatlantic charter yields per passenger-mile	A-10
9	Applicants' financial status	A-11
10	Applicants' financial operating results	A-12
11	Comparison of rates charged by Pan American and TWA with TIA's rates	A-13
Order		A-14
Certificates of public convenience and necessity		A-15

(28752)

28752

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

The transatlantic is the largest transocean air travel market and the transatlantic charter market is the largest air charter market.

Transatlantic air travel is growing at almost double the rate of growth of all air traffic between the United States and other countries.

The transatlantic air charter market continues to be characterized by high seasonality, brief but intense periods of demand, and directional imbalance.

Dominance of the transatlantic charter market by foreign air carriers has increased in extent.

The preponderance of the demand of the transatlantic air charter market is for service with jet aircraft and transportation by piston aircraft is no longer acceptable.

Presently authorized U. S. carriers have failed to offer the jet equipment potential transatlantic travelers demand, have failed to offer the volume of such charter service needed, and have failed to develop the traffic in an aggressive manner. They are unlikely to perform future operations of the magnitude which they forecast.

A higher percentage of the total transatlantic charter travel would be generated in the non-northeast sections of the United States if these traffic sources were adequately developed.

The volume of transatlantic air charter traffic has grown rapidly since the last hearing in spite of the inadequacies of service and should reach a total of 750,000 passengers in the first full year of implementation of service by the four new carriers herein recommended for authorization.

The traffic of the four qualified applicants would consist primarily of newly generated traffic and would not have significant adverse effect on the operations of Capitol, Pan American, Saturn, and TWA.

28753

American Flyers Airline Corporation, Overseas National Airways, Inc., Trans International Airlines, Inc., and World Airways, Inc., are qualified to perform transatlantic air charter operations with jet aircraft.

Modern Air Transport, Inc., United States Overseas Airlines, Inc., and Zantop Air Transport, Inc., are not qualified to perform transatlantic air charter operations with jet aircraft.

Recommended that the Board issue certificates of public convenience and necessity for transatlantic air charter service to the four applicants qualified to perform such service with jet aircraft and deny the applications in all other respects.

28754

RECOMMENDED DECISION OF RALPH L. WISER, HEARING EXAMINER

Preliminary statement. This is a reopened phase of the *Transatlantic Charter Investigation.* Previous steps in this

proceeding include (1) the Board's decision of October 8, 1963, concluding that three supplemental air carriers—Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc.—should be authorized to perform transatlantic charter operations, (2) the approval of the President on February 18, 1964, of the decision granting licenses to Capitol and Saturn, and (3) reopening of the proceeding on February 24, 1964,[1] pursuant to the President's directive, to determine whether developments since the Board's original decision had rendered Overseas National no longer financially fit to conduct transatlantic charter air transportation. After a hearing on this reopening, the Board concluded that the record before it could not justify a finding that Overseas National met the statutory test of fitness. In the meantime, Overseas National had asked reopening of the record to receive evidence on refinancing agreements, contracts, and arrangements entered into subsequent to the close of the hearing, and it and other parties made presentations for and against further reopening of the proceeding on the question of need for authorizations in addition to those of Capitol and Saturn.

The Board reopened the proceeding March 30, 1965,[2] to determine (a) the current fitness and comparative qualifications for selection as transatlantic charter carriers of all supplemental air carriers (including Overseas National)

who were then applicants in the proceeding, and (b) whether the public convenience and necessity require the

[1] Supplemental opinion and order E-20530/E-20531.

[2] Order E-21966.

certification of supplemental air carriers to provide transatlantic charter service in addition to Capitol and Saturn. The Board further provided that any supplemental air carrier not already an applicant could file an application for transatlantic charter authority for consolidation in the proceeding and several new applications were filed and consolidated. American Flyers Airline Corporation, Modern Air Transport, Inc., Overseas National Airways, Inc., Trans-International Airlines, Inc., United States Overseas Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc., are the applicants now before the Board for consideration for transatlantic charter authority. The Board permitted intervention by Capitol Airways, Inc., Pan American World Airways, Inc., Saturn Airways, Inc., and Trans World Airlines, Inc. Copies of all applications were sent to the President prior to hearing pursuant to the provisions of section 801 of the Federal Aviation Act. Hearing has been held and briefs have been filed.

In the previous stage of the proceeding the Board recognized that the two major effects of operations by supplemental carriers in the transatlantic charter market had been (1) extending the availability of transatlantic air travel to a part of the potential market which otherwise could not have afforded it but which was able to do so by virtue of the substantially lower price for carriage on a pro rata charter compared with that on individually ticketed service, and (2) increasing the availability of charters during the peak summer season, when U. S. flag scheduled carriers, because it is also the peak season for individually ticketed travel, could not satisfy the demands of the transatlantic charter market. The Board concluded that three

of the supplemental carriers should be authorized to perform such service on a certificated basis.[3]

28756

Since the last hearing, the results of scheduled air carrier operations in the transatlantic market have changed from marginal to highly profitable; there has been failure of the group fare program of the scheduled carriers to meet the needs of travelers who would use charter service; the foreign air carriers have increased the extent of their dominance of the transatlantic charter market; the total traffic using that market has more than doubled in volume; the predominant proportion of its travelers have come to demand jet aircraft and to reject piston equipment for this transportation; but the market's development in traffic volume has been limited by the quality and volume of service offered.

Positions of the parties. The presently authorized U. S. carriers contend that it would be adverse to the public convenience and necessity to authorize any additional charter carriers, that they and the presently authorized foreign air carriers will meet any needs for service, and that entry of new carriers would adversely affect the ability of the presently certificated carriers to provide service. The applicants ONA and World urge the need for additional service but contend that only one additional carrier is needed. TIA contends that two additional carriers are needed, of which it should be one. American Flyers, Modern, USOA and Zantop take the position that the market needs the capacity of all qualified applicants. The Experiment In

[3] Order E-20530, appendix A, p. 5, mimeograph copy.

International Living, appearing under Rule 15 of the Procedural Regulations, supports the position that one or more additional transatlantic charter carriers should be authorized. Bureau counsel considers all of the applicants except USOA to be qualified and believes that the market potential and the limitations of existing service would justify the certification of all of the six qualified applicants but that

28757

only two should be authorized because to authorize more would give foreign countries the impression of a U. S. effort to preempt the market and have the effect of impeding the ability of presently certificated carriers as well as newly certificated carriers to obtain necessary foreign landing rights. Pan American and Saturn argue that the foreign relations aspect requires denial of any new authorizations.

Characteristics of the transatlantic charter market. The characteristics of the transatlantic charter market were detailed in the Board's previous decision, and it remains for the most part in the same posture. Briefly, it is characterized by high seasonality, brief but intense periods of demand, and directional imbalance. It is the world's most lucrative charter market and it is growing rapidly.

Looking at the transatlantic air travel market as a whole, i.e., scheduled and charter traffic, it is found to be the world's heaviest transocean travel market, and the factors affecting it will undoubtedly continue it in this position. In 1963 the transatlantic air travel market comprised 26 percent of the total world international air passenger-miles. In the same year, Europe was the origin or destination of 44 percent of the 5,997,000 total air travelers arriving or departing the United States in all directions. Passenger

(28757, 28758)

data herein are stated in terms of one way trips unless otherwise indicated. Total air traffic of IATA carriers in the transatlantic market increased at an annual rate of 18.1 percent between 1957 and 1964, about double the annual rate of growth of traffic within the United States (7.1 percent) and between the United States and other countries (10.7 percent).

28758

An indication of the world dominance of the transatlantic charter market is provided by a comparison of the 1964 transatlantic civil passenger charter revenues (excluding those of traffic to and from Canada) of U. S. and foreign IATA carriers and Capitol and Saturn of $43,949,310 with the total 1963 civil passenger charter revenues of all U. S. domestic, U. S. foreign, and U. S. overseas carriers of $20,751,000. The growth in the transatlantic charter passenger total has been erratic but it has been substantial each year, ranging from 18 to 52 percent in the years since 1957. It increased 28 percent in 1963, 30 percent in 1964, and 18 percent in 1965. A measure of the transatlantic charter market's seasonality is provided by the fact that the six months from May through September account for more than 80 percent of the year's total, with about 40 percent concentrated in the months of July and August.

The directionality can and has been mitigated to some extent by increased generation of foreign-originated flights through lower rates for such flights. However, the benefits of this remedy are limited by the reduction in revenue-mile yield which follows. Thus, while Saturn had more foreign-originated than U. S.-originated flights planned for 1965, the estimated total revenue from those flights was less than from the U. S. originations.

The demand for jet aircraft and the rejection of piston aircraft. The overwhelming preponderance of the demand of the transatlantic market is for service with jet aircraft. Transportation by piston aircraft is no longer acceptable. Since January 1964, over 98 percent of all transatlantic service has been provided with jet equipment. This was a gradual increase from the 54-percent jet showing in January 1960. The transatlantic charter market is in the same posture in demanding jet service.

28759

Travel agent opinion indicates that a 1,000-mile trip or a 5-hour elapsed time is about the point at which passengers generally will reject piston equipment and demand jet aircraft. They are practically unanimous in their opinion that service with piston aircraft is not acceptable to prospective transatlantic charter passengers.

The preference for jet aircraft and the relative unattractiveness of piston engine aircraft is illustrated by the 1965 experience of Capitol and Saturn. From May through September, Capitol's DC-8 jet aircraft was fully committed except for the capability of performing two transatlantic round trips in May. During the same 5-month period, it had the capability of performing 140 one-way transatlantic charter flights monthly with its seven Constellation piston engine aircraft, but operated only 2 in May, 54 in June, 59 in July, and 76 in August. Saturn had a capability of 150 one-way transatlantic flights monthly with its seven DC-7 aircraft but operated only 12 in May, 72 in June, 147 in July, 122 in August, and 44 in September.

The applicants who would use DC-7 aircraft stress its smaller capacity and its usefulness in handling smaller

groups than those required for charter of jet aircraft. However, the approximate doubling of elapsed time required for a DC-7 trip and the preference of passengers for jet equipment, considered in conjunction with the improved operating economy of jet aircraft, make it clear that there is little likelihood of success of service with piston engine aircraft. An operation limited to use of DC-7 aircraft such as contemplated by Modern, USOA, and Zantop would thus be doomed to probability of failure from the outset from the standpoint of both cost and traffic attraction. Accordingly, it is concluded that the needs for additional service are limited to service with jet aircraft.

28760

Operations of Part 295 carriers. Saturn increased its transatlantic charter traffic from 1,468 passengers in 1961 to 4,213 in 1962, 6,961 in 1963, and 5,547 in 1964. Revenue from this traffic increased from $203,446 in 1961 to $405,231 in 1962, $719,230 in 1963, and $1,599,830 in 1964. Its allocation of expenses results in a loss of $43,224 in 1963 and a profit of $56,486 in 1964 on transatlantic charter business.

Capitol increased its transatlantic charter traffic from 8,375 passengers in 1961 to 18,744 in 1962, 12,224 in 1963, and 30,975 in 1964. Revenues from such traffic were $1,320,349 in 1961, $2,115,060 in 1962, $1,321,243 in 1963, and $3,564,069 in 1964. Its allocation of expenses indicates a net profit of $28,000 in 1963 and $461,337 in 1964.

The traffic carried by Part 295 carriers during the first 11 months of 1965 was comprised of 45,488 passengers carried by Capitol, 39,603 by Saturn, 3,058 by TIA, 2,916 by World, and 1,049 by American Flyers.

American Flyers, TIA, and World did not obtain authority to operate transatlantic charters until April and June

and had insufficient time to develop substantial summer business here in 1965. A lead time of some 6 months is necessary to enable a carrier to put together a satisfactory transatlantic charter program.

Adequacy of presently authorized service. Transatlantic passenger charter traffic has been carried for the past 3 years, in order of volume, by 13 foreign route carriers,[4] 3 to 5 U. S. Part 295 carriers,[5] 2 U. S. transatlantic route carriers,[6] 7 other foreign carriers authorized under section

28761

402,[7] and 11 operators entering under section 1108(b).[8] In addition, Continental Air Lines, Inc., a U. S. domestic trunkline carrier, conducted such operations in 1965. Three U. S. supplemental carriers—American Flyers, World, and TIA—also conducted limited operations in the summer of 1965 under amendments of their interim certificates for supplemental air transportation which authorized transatlantic

---

[4] Aerlinte, Air France, Air India, Alitalia, BOAC, El Al, Iberia, KLM, Lufthansa, Qantas, Sabena, SAS, and Swissair.

[5] American Flyers, Capitol, Flying Tiger, ONA, Saturn, TIA, and World.

[6] Pan American and TWA.

[7] Air Canada, Adria Airways (Yugoslavia), Balair AG (Switzerland), British Eagle International Ltd., Caledonian Airways (Prestwick) Ltd., Icelandic Airlines, Inc., and KAR-AIR-oy (Finland). Sudflug (Germany) has not conducted any operations under its 402 permit.

[8] Belgian International Air Service, Braathens S. A. F. E. Air Transport A/S (Norway), British United Airways, Ltd., Globe Air, Ltd. (Switzerland), Interocean Airways, S. A. (Luxembourg), Martin's Air Charter (the Netherlands), Ostermanair Charter AB (Sweden), Shannon Air Limited (Ireland), Sobelair, S. A. (Belgium), Transair Sweden AB, and United Arab Airlines.

charter flights under Part 295 between May 1 and September 30, 1965, by World and TIA[9] and between June 2 and September 30, 1965, for American Flyers.[10] Modern was issued a temporary amendment for the period June 24-September 30, 1965,[11] but conducted no operations. Thus, some 40 carriers have participated in this airlift in the past 3 years. The foreign route carriers moved approximately 80 percent of the traffic in both 1963 and 1964 and 63 percent in 1965. The U. S. transatlantic route carriers accounted for only 10 percent in 1963, 5 percent in 1964, and 7 percent in 1965. Total U. S. carrier participation was 20 percent in 1963 and in 1964 and an estimated 30 percent in 1965. They had transported 71 percent of the total in 1957, 69 in 1958, 65 in 1959, 35 in 1960, 37 in 1961, and 35 in 1962.

28762

The applicants and Bureau counsel attack the adequacy of service by the presently authorized U. S. carriers on the grounds that these carriers have failed to offer the jet equipment potential transatlantic travelers demand, have failed to offer the volume of service needed, and have failed to develop the traffic in an aggressive manner. The record substantiates their positions in these respects.

During the period between December 1, 1964, and March 15, 1965, Capitol received 94 inquiries for 1965 transatlantic charters (65 for jet equipment and 29 for piston) on which it could not make quotations because of unavailability of the type of aircraft desired on the date desired. Saturn

[9] Order E-22045, dated April 16, 1965.

[10] Order E-22260, dated June 2, 1965.

[11] Order E-22357, dated June 24, 1965.

keeps no records of refused charters, but a review of its correspondence files prior to June 1, 1965, showed 13 requests for which aircraft were not available. Pan American received 195 inquiries between January 1 and May 18, 1965, for 1965 transatlantic charters which were refused due to inability to commit equipment. TWA had no records on refusals.

The presently authorized carriers argue that the evidence of charter refusals has no significance, because of the practice of charter prospects of shopping around and asking a number of carriers concerning the same trip. This is undoubtedly a practice sometimes followed. But the testimony of representatives of many large travel agencies is also strong in showing a lack of enough service in 1965. For example, one New York agent testified that his company could have sold at least 60 transatlantic charters instead of the 26 then scheduled if jet equipment had been available on the required dates. Another agency (located in Chicago) stopped promoting transatlantic charters in the fall of 1964 when it became apparent to it that jet equipment could not

be guaranteed for the 1965 summer months. A representative of the agency which is the largest sales incentive company in the world testified that it has become increasingly difficult to obtain charter flights from U. S. scheduled carriers, from whom it could obtain charter commitments no more than 25 percent of the time. An agent in Los Angeles testified that there were two foreign air carriers providing charters between that city and Europe, that the district sales manager of one (Air France) had advised him that it had 312 applications for 32 flights to Europe and that the other carrier (Lufthansa) had advised him that it was un-

able to fill 10 percent of the requests received. This agent had been unable to obtain any charter capacity from U. S. scheduled carriers and was unwilling to use the piston equipment which had been offered by Capitol and Saturn. A Detroit agent testified that it is "very difficult, and sometimes hopeless" to secure charter capacity to Europe during the May-September season and that his company had problems in securing capacity during the March-May and October-November periods. A New York agency's representative testified to difficulty in obtaining flights either in the desired equipment or on preferred dates, with meeting either objective frequently impossible. His experience had shown Alitalia, Air India, Iberia, and TWA to have practically withdrawn from the market and BOAC, KLM, and SAS to have sharply reduced the capacity they offered from that of 1964. While he found these reductions offset in part by increased capability of Icelandic Airlines and Capitol and Saturn, the offer of these carriers was for the most part limited to piston equipment and not considered suitable for most of this agency's customers. Another New York agent had experienced price increases by foreign carriers for jet charters, which in his opinion was due to the shortage.

28764

Transatlantic charter traffic is relatively insignificant to Pan American and TWA. In 1963, April-September pro rata charter traffic constituted only 0.6 percent of scheduled passengers in Pan American's Atlantic division and TWA's international division. The lack of importance which they attach to it is highlighted by a comparison of their 130-percent increase of April-September scheduled passenger traffic in the period from 1957 to 1964 with their 2.7 percent

increase of charter traffic in the same period. The attitude of relative indifference of Pan American and TWA toward this market is further demonstrated by the fact that only 1 percent of their transatlantic flights were charter flights in 1964, whereas 11 percent of the transatlantic flights of IATA foreign carriers were charter flights.

The certificated route carriers argued in the previous phase of the proceeding that the establishment of their group fares removed the need for certificated charter fares. The Board's view that it was unreasonable to expect these fares to attract large numbers of travelers who would otherwise use charter service has been sustained by subsequent developments showing a limited and decreasing use of the group fares and continued expansion of charter traffic. Pan American carried 14,321 group fare passengers in 1962, 27,921 in 1963, 12,664 in 1964, and 6,048 in the first 8 months of 1965.

It is now argued that the 14-21 day individual excursion fares of the certificated route carriers will do what the group fares failed to do. Typical fares are those between New York and London of $300 and between New York and Paris of $341. Pan American points out that the total of a passenger's share of a charter plus local fares for various air trips in Europe beyond the charter destination would result in approximately the same total as would the excursion fare on the basis of Capitol's charter price and a some-

what higher total on the basis of Saturn's price. However, these fares are so restricted that they cannot serve the prospective charter passenger. They are not applicable on weekends (7 a.m. Friday to 7 a.m. Monday). That this is

the time period which is by far the most popular for departure of charter passengers is illustrated by the fact that 62 percent of U. S. carriers' charter travelers in 1964 departed on the weekend eastbound and 55 percent westbound. The excursion fares also require that the return travel be commenced not earlier than 14 days or later than 21 days after departure. Only 8 percent of the charter passengers of Pan American and TWA in 1964 traveled for durations of stay that would not be excluded by this limitation. The excursion fares are also unavailable eastbound June 11 through July 11, August 6 through August 29, and November 5 through February 15. Westbound they are unavailable June 4 through June 27, August 20 through September 12, and November 5 through February 15. The cost comparison of Pan American would apply for particular trips using local air transportation beyond the charter point. But on other trips, charter would be much more economical. For example, World points out that the excursion fare for a Los Angeles-London round trip is $588, whereas the pro rata charter cost on a World charter flight with 165-seat occupancy would be $265 in the winter season. Travel agent opinion indicates that the excursion fares are no substitute for charter service.

The 1965 season was characterized by a slight reduction in the charter transportation offered by foreign route carriers rather than the substantial expansion which demand would have justified.

Both Capitol and Saturn have operated on a relatively passive basis and have been satisfied to depend on business the IATA carriers were unable to handle.

Saturn's record up to now is obviously not one of aggressive participation in the transatlantic charter market. It has little faith in advertising, as evidenced by its total of only $11,410 expended in 1964—a year in which its revenues exceeded $5 million. Charter travelers are very price conscious—and they much prefer jet equipment. Saturn's president admits that its rates have always been higher than average and probably will continue in that pattern. With such rates, a failure to advertise, and no jet equipment, it is not surprising that the success of Saturn's operation has been limited. The recently approved merger with AAXICO may of course change the company's approach, but there is no way of foretelling when, how and to what extent at this time.

Capitol has a somewhat better record in that it has provided jet service with its DC-8, although 41 percent of its usage was military during the June-October period. But it spent only $8,000 on advertising in 1964—a year in which its revenues exceeded $11 million.

Bureau counsel aptly points out that the attainment of an increase by Capitol and Saturn from approximately 45,000 passengers in 1964 to over 80,000 in 1965 with the limited efforts of these two carriers reflects in itself the vast potential of the transatlantic charter market.

Capitol, Saturn, Pan American and TWA contend that presently authorized carriers will more than meet any need of transatlantic charter traffic in 1966. They have indicated in this proceeding that they plan to offer the following availability in the May-October period:

Carrier	Flights	Seats
TWA[12]	156	23,400
Pan American[13]	368	58,500
Saturn[14]	1,080	122,400
Capitol[15]	1,608	235,500
IATA foreign carrier capacity estimated by Capitol/Saturn		245,000
		684,800

There is no way that anyone could prove that Pan American and TWA will not carry out their plans to assign more aircraft capacity to charter service in the future, but the argument must be discounted heavily. Facing the boom in overall passenger traffic which is underway in both the domestic and transatlantic markets and which can be expected to continue for some time, these carriers will have their hands full taking care of their scheduled operations and can be expected to relegate charter service to a back seat. In explaining its past inactivity in charters, the TWA witness characterized its policy as one of "first things come first" and stated that "there simply was not enough aircraft available to devote to all the company's markets." The future can best be judged by the past here. Their past his-

[12] 3 round trips per week with jet equipment.

[13] 1 round trip daily with jet equipment.

[14] 180 jet flights with 28,800 seats and 900 DC-7 flights with 93,600 seats.

[15] 768 DC-8 flights with 140,544 seats and 840 Super Constellation flights with 94,920 seats.

tory of providing transatlantic charter service shows them to be weak reeds upon which to rely for the development and service of this market.

Looking at Saturn's forecast, it must be borne in mind that there is no assurance that it will have jet aircraft in 1966, since it had made no arrangements at the time of the hearing to obtain such equipment. Capitol does have a DC-8F on hand and has two more on order—one for delivery in the fall of 1965 and one for delivery in March 1966. However, much of the capacity of its present jet was committed to military business and it is quite likely that this will be a limiting factor in 1966 with respect to Capitol's jets.

28768

The future activity of the foreign air carriers is yet more difficult to appraise. They failed to increase their offerings in 1965 over the level of 1964, even though the market obviously demanded more service.

The foregoing considerations lead to the conclusion that there is little likelihood that the presently authorized U. S. carriers would come up to the expectations they would have the Board view them with for 1966. It is probable that their transatlantic charter operations will be of substantially less magnitude than they forecast.

Transatlantic charter service has been confined largely to originations or destinations in the northeastern section of the United States. In 1964, the Northeast accounted for 74 percent of Pan American's transatlantic charters, 37 percent of those of TWA, 79 percent of those of Capitol, and 89 percent of those of Saturn. Similar concentration by foreign carriers is shown by the fact that they had only 40

flights in the peak months to nonnortheastern points, of which 26 were to or from the west coast and only 10 to or from midwestern points.

The nonnortheastern sections have 75 percent of the Nation's population and produce 76 percent of the Nation's total air passenger originations. Capitol and Saturn's argument that they have provided all the service to nonnortheastern points that would be used is mitigated in large measure by the revelation of their comparative failure to market aggressively transportation in the transatlantic market. It is probable that a higher percentage of the Nation's total transatlantic charter travel would be generated in the nonnortheastern sections if these traffic sources were adequately developed.

28769

The future transatlantic charter market. The applicants' forecasts of one-way transatlantic charter passengers for 1966 range from 391,400 by ONA through 526,509 by TIA, 753,000 by World, 821,492 by Modern, 906,662 by American Flyers, 985,696 by Zantop, to 1,000,000 by USOA. The estimates of ONA and TIA cover only pro rata charter passengers for the peak April-September season. That of Zantop envisions six additional supplemental carriers and that of World, four. These two applicants estimate 826,146 and 698,000, respectively, if only one additional carrier is certificated. Capitol and Saturn estimate the 1966 peak season pro rata charter market at 431,726 passengers. Bureau counsel contends that the year's total charter traffic in this market should reach 750,000 for the first full year of implementation of the new two-carrier authority he recommends.

American Flyers expands the 1964 transatlantic charter traffic of all carriers (419,752 passengers)[16] by the 1960-64 annual growth rate of 20 percent per year and reaches a total of 604,442 passengers based on the existing type of market development. It contends that the present carriers have concentrated their efforts on traffic to and from the northeastern States and have neglected the development of the rest of the country's traffic to and from Europe. It believes that the other States should increase their present 25 percent of total transatlantic charter traffic to 50 percent of the total market, in more consistent relation to relative position in population, wealth, income, and air passenger originations for scheduled transatlantic services.

28770

This results in a 302,220-passenger increase of the 1966 estimate to a total of 906,662.

Modern expands its estimate of 330,000 passengers for 1963 submitted in the original proceeding by the 47-percent experienced increase of 1964 pro rata traffic over 1963 for April through September and further expands by a 30-percent judgment figure for 2 years, to reach an estimate of 821,492 for 1966.

ONA estimates the 1966 transatlantic charter market at 391,400 one-way passengers. It reaches this estimate by expanding the 271,809 pro rata passengers during the 1964 6-month peak season by the 20-percent average yearly increase in this traffic between 1960 and 1964.

---

[16] This figure includes peak season traffic only in the case of foreign charter carriers.

[17] Prehearing Conference Report, served May 10, 1965, page 3.

(28770, 28771)

TIA presented an analysis showing the trend values for 1966 and 1967 based on peak season pro rata traffic between 1957 and 1964. On this basis this peak season traffic is shown to increase from a 271,809-passenger total in 1964 to 526,509 passengers in 1966 and 697,242 in 1967.

USOA's estimate is a judgment figure unsupported by analysis.

World submitted an estimate that 1966 transatlantic charter traffic would be 642,250 passengers if no new U. S. carriers participate, 698,468 if World only is added, and 753,500 if four new supplemental carriers are added (World and three others). The 642,250 total is based on an averaging of the results from projecting the long-run trend (from 1957) and the short-run (from 1962) of the component parts of transatlantic charter traffic, with a resulting total of 627,250 passengers. To this was added an allowance of 15,000 pas-

28771

sengers reflecting the grant of authorization to additional foreign charter carriers. The estimate of 56,218 more passengers if only World is added is based on 81,774 passengers to be carried by World in consideration of its projected jet capacity, of which 25,556 would be diverted from existing charter operations—mainly those of IATA carriers. The further estimated increase with addition of World and three other supplemental carriers is based on World carrying one-third of the total Part 295 traffic which would then be 238,300 passengers and upon estimates of further diversion from existing charter operations (again mainly those of the IATA route carriers).

Zantop computes a 26-percent average annual growth between 1957 and 1964 in April-September transatlantic charter flights and a 35-percent average growth in the number of eastbound transatlantic charter passengers in this period, and expands 1964 eastbound flight and passenger figures to reach an estimate of 2,785 flights and 397,186 transatlantic charter passengers eastbound for 1966 if existing authorizations are continued. It expresses a judgment that each new Part 295 authorization would increase the market 4 percent—thus that the eastbound passenger total would be 413,073 with one new carrier, 444,848 with three new carriers, and 492,511 with six new carriers.

Capitol and Saturn estimate that total transatlantic air traffic will increase 15 percent in 1965 and 10 percent in 1966. They estimate that U. S. route carrier charter traffic will double from 10,684 in 1964 to a 20,000-passenger total for the summer of 1965 and to 40,000 for the summer of 1966. Foreign route carrier charter traffic is forecast at a 15-percent increase for 1965 (222,479) and a 10-percent in-

crease for 1966 (244,726), the percentages estimated for increase of total traffic. Foreign charter carrier traffic is envisioned at a 2½ times 1964 rate for 1965 (25,000) and about a one-third increase for 1966 (35,000). Traffic of U. S. Part 295 carriers is viewed as rising from 56,991 passengers in 1964 to 80,000 in 1965 and 112,000 in 1966. This results in an estimate that the total summer season transatlantic pro rata charter traffic will increase from the 271,809 of 1964 to 347,479 in 1965 and 431,726 in 1966, with summer charter traffic 8.39 percent of the yearly total in 1965 and 9.48 percent in 1966.

(28772, 28773)

The merit of the contention of Bureau counsel that the volume of transatlantic charter traffic has depended in large measure upon price and the volume of service offered is illustrated in the volume of service aspect by the traffic figures for 1959 and 1960. In 1959, U. S. carriers moved 41,439 pro rata passengers and foreign flag carriers moved 22,432. The next year, however, the U. S. carriers moved 46,046 passengers and the foreign carriers 83,506. Since the traffic has at all times consisted predominantly of U. S.-originated passengers, it is obvious that the offering of more service by the foreign carriers accounted primarily for the increase in total traffic in 1960—a year in which total pro rata peak season traffic doubled. The almost universal plaint of the travel agents as to shortage of available charter service in 1965 is indicative of the probability that the market could provide much more traffic if more service were provided. The responsiveness of the transatlantic market to price in both the scheduled and charter fields is so well established by experience as to render further proof unnecessary.

28773

The record is clear that the recent growth of the market has occurred in spite of the minimal extent to which present carriers have actively exploited their opportunities. Alleviation of this situation can be expected from the new carriers. The jet aircraft which they offer will bring lower prices. Costs of individual travelers can be brought down to the vicinity of 2 cents per mile, a substantial drop from present levels of charter prices. The new carriers can be expected to develop traffic in larger measures in areas outside the northeastern section of the United States and

in the field of single entity charters for sales incentive programs. In the light of these factors, it is concluded that the 750,000-passenger total suggested by Bureau counsel is reasonably attainable.

Effect of additional services on existing carriers. Diversion from Pan American and TWA that might result from certification of additional carriers in this proceeding is relatively insignificant. Charter traffic amounted to only 0.6 percent of scheduled passengers in Pan American's Atlantic division and TWA's international division in 1963. The different nature of charter as distinguished from individually ticketed traffic and the fact that most of the charter traffic of the new carriers can be expected to be newly generated traffic make any effect on scheduled operations minimal in proportion. In 1961, Pan American's return on investment was only 4.31 percent and TWA incurred a loss of $13,711,000 in its international operations, but the year ended September 30, 1964, brought Pan American a 14½-percent return on investment and TWA a 29-percent return for its international operations.

28774

Capitol and Saturn are very pessimistic as to diversion and the ferry flight problem and foresee dire consequences if other Part 295 carriers are authorized. Capitol shows that while past years have seen from 3 to 10 Part 295 U. S. charter carriers in the transatlantic market, each year has seen two carriers obtaining 54 to 70 percent of the traffic attracted by these carriers, albeit not the same two carriers. It sees the percentage of ferry mileage increasing if more than two carriers are authorized, and it believes that addi-

tional carriers would imperil development of the off-season market.

The fatal defect in Capitol's argument is that it treats the transatlantic charter market for Part 295 carriers as a separate market apart from the total transatlantic charter market. Under its theory, there is an unstated but understood line between the traffic of these and other carriers. The record does not justify any such compartmentalization.

While chartering groups may, from time to time, as Saturn's witness testified, prefer scheduled carriers over supplemental carriers, World has presented a considerable amount of travel agent testimony showing that it has overcome this problem and that many customers now prefer its services. Other Part 295 carriers, have, of course, the opportunity to accomplish the same effect. The failure of Saturn and Capitol to do any significant advertising undoubtedly explains, at least in part, their predicament in this respect. Capitol and Saturn have not shown that the ferry problem is other than a management one of selling and scheduling their flights in such a manner as to fit charters together so as to avoid undue numbers of unpaid ferry

legs. World points out that Saturn itself in 1962—when there were six Part 295 carriers in the market—had ferry hours of only 11.3 percent of live hours. This was at a time when the market amounted to about a third of the total which can be expected when the new authorizations are implemented.

The development of the market has been limited by the lack of aggressive exploitation and the failure to provide enough service with jet aircraft. The adverse attitude of

transatlantic travelers which has developed toward piston equipment limits severely the market for operations with such equipment, and it could be expected that piston operations by additionally authorized U. S. charter carriers would have the effect of diverting within this limited market from the piston operations of Capitol and Saturn. However, the four carriers recommended for authorization should be able to attract traffic to their jet services which would be primarily newly developed traffic and would leave Capitol and Saturn reasonable opportunity to attract traffic in support of their operations.

28776

The balance of payments. Presentations have been made on the impact of proposed operations on the balance of payments between this country and foreign nations. The record is clear that each new U. S. passenger going abroad results in a deficit in the foreign payments balance and that each foreign-originated passenger has a favorable impact. The deficit from U. S.-originated travel is greater and the favorable impact from foreign-originated travel is less in the case of travel on foreign-flag carriers than on U. S.-flag carriers. World estimates the levels at $544 deficit for an American on a U. S.-flag carrier (—$94 port expense and —$450 travel expense); $639 deficit for an American on a foreign-flag carrier (—$283 fare, +$94 port expense, and —$450 travel expense); $523 favorable impact for a foreigner on a U. S.-flag carrier (+$184 fare, —$61 port expenses, and +$400 travel expenses); and $461 favorable impact for a foreigner on a foreign-flag carrier (+$61 port expense and +$400 travel expense). TWA estimates the

deficit to be about $150 greater for U. S. passengers and the favorable impact to be about $50 less for foreign-originated travelers. The differences between the two estimates are concerned in large measure with dispute as to whether charter passengers spend as much as average visitors in countries to which they travel.

It is unnecessary to resolve the differences in the estimates. The Board's mandate under the Federal Aviation Act to encourage and develop an air transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense precludes the Board from planning an air transportation system designed to discourage air travel. The obvious way of improvement

with respect to the balance of payments aspect consistent with the Board's mandate is to attract more and more foreign-originated traffic and to increase the relative participation by U. S. carriers in the total air movement. Further authorizations of supplemental carriers as recommended herein should tend to push towards both of these objectives.

Difficulties in negotiating with foreign governments. Bureau counsel contends all applicants except USOA to be fit, willing and able, and concludes that the market growth would permit certification of all of the qualified applicants. However, he argues that authorization of more than two new transatlantic charter carriers would create difficulties in negotiations with foreign governments for landing rights and would inhibit the eventual acceptance internationally of the concept of expanded economic opportunity for this class of carrier.

The ground rules established in this proceeding at the prehearing conference, provided that the evidence of the parties must be reduced to written exhibit form and exchanged with other parties on prescribed dates prior to the hearing.[17] No party submitted any evidence in its exhibits concerning difficulties in negotiations with foreign governments. Nor did any party give any notice whatsoever to the other parties during the hearing that it desired to try the issue of effect of new authorizations on negotiations with foreign governments as an issue in this proceeding, with one possible exception. On the next to the last day of the hearing, after all the applicants had introduced their evidence, Saturn attempted to present a witness' oral testimony on its problems in respect of landing rights. This was an untimely attempt to inject a new issue into the proceed-

ing and violated the ground rule requiring reduction of evidence to written form. It was therefore denied.

Bureau counsel refers to several responses on cross-examination of supplemental carrier witnesses that they had encountered difficulties in obtaining landing rights in certain countries. The responses generally concerned explanations for the delay in expansion of charter operations in the Pacific. Evidence was not received or offered which would provide a basis upon which the Board could determine the reaction of foreign governments to different numbers of authorizations of transatlantic charter carriers. There was no hint of an intent to inject this issue until Saturn's offer of proof at the end of the hearing.

[17] Prehearing Conference Report, served May 10, 1965, page 3.

(28778, 28779)

Accordingly, the contentions of Bureau Counsel, Pan American and Saturn are rejected as lacking support in the record insofar as these parties ask that some or all of the applications be denied because of the effect of their grant upon negotiations with foreign governments.[18]

We do not here reach the question, therefore, as to whether such an issue would be proper for trial at the Board hearing or should be reserved for the President's decision on the basis of his peculiar knowledge of matters of this type which gave rise to the requirements of Section 801 that he approve all certificates authorizing foreign air transportation.

28779

Qualifications—general. Each of the applicants, as are most of the existing supplemental air carriers, is owned and controlled by a single individual or a very small group. American Flyers is owned by Mr. Reed Pigman, Modern by Mr. John P. Becker,[19] Overseas National by Messrs. Charles C. Hickox, G. F. Steedman Hinckley, and Louis Marx, Jr.,[20] Trans International by Messrs. Kirk Kerkorian and Glenn A. Cramer,[21] USOA by Mr. Ralph W.

---

[18] American Flyers by motion of September 28, 1965, asked that the examiner strike the portions of the briefs of Bureau Counsel and Pan American bearing on this question. The above consideration and rejection of these contentions is more appropriate and the motion is therefore denied.

[19] A ⅜ interest was sold to Mr. Ora J. Curry in March 1965.

[20] A total of 625 shares of the 15,000 outstanding are owned by 11 other individuals.

[21] Mr. Kerkorian owns 65.9% and Mr. Cramer 7.7% of the stock. The other 24.4% is distributed among a large number of shareholders, only one of whom (Henry P. Huff, executive vice president) owns as much as 1%.

Cox, Jr., World Airways by Mr. Edward J. Daly, and Zantop by Messrs. Howard, Lloyd, and Duane Zantop. The relationships go back many years except for the ONA ownership.

Each of the applicants is a corporation organized under the laws of the United States or one of its States, Territories, or possessions, of which the president and two-thirds or more of the board of directors and other managing officers are citizens of the United States and in which at least 75 percent of the voting interest is owned or controlled by citizens of the United States. Each of the applicants is, therefore, a citizen of the United States within the meaning of section 101(13) of the Federal Aviation Act.

No evidence has been presented which would justify an adverse finding with respect to the compliance disposition of any of the applicants, and each is found to have the requisite disposition to comply with the Act and the Board's regulations.

28780

Each applicant has submitted a plan of operation showing how it will provide transatlantic air transportation. Appendix 6 summarizes the plans, showing equipment to be used, volumes of operations to be provided, and forecasts of revenues and expenses. The revenue and expense forecasts are in general somewhat optimistic, although the degree of over and understatement varies. The four applicants selected for certification (American Flyers, ONA, TIA, and World) submitted the more disciplined analyses.

The financial status of each applicant as indicated on a recent balance sheet is shown in appendix 8 and the financial results of a recent year of operation are shown in appendix 9.

(28780, 28781)

Qualifications—American Flyers. American Flyers has a long history of operations in substantial volume as a supplemental air carrier, and for the past 10 years has included charters to foreign countries in its business. However, these foreign operations were limited to Mexico, Canada, and the Caribbean area until 1965, when transatlantic authority to operate for that year's summer season was granted the carrier. It carried 1049 transatlantic charter passengers under this authority. Its present fleet of 15 aircraft includes two turboprop Electras and five 1049G Super Constellations which would be used in the transatlantic operation in the beginning. The other aircraft on hand are four 049/149 Constellations and four DC-3's. The applicant's transport activities resulted in $7,510,101 revenue in the year ended September 30, 1965, from which its profit was $236,045.

In addition to its transport activities, American Flyers has conducted flight crew training since 1939, at schools at Fort Worth, Texas, and Ardmore, Oklahoma.

28781

The applicant has opened or plans to open soon a total of seven midcontinent sales offices (Chicago, Houston, Dallas, Fort Worth, Ardmore, Atlanta, and New Orleans). It will open sales offices in London, Frankfurt and Rome if it receives certification herein.

The carrier's operations have included a higher percentage of commercial revenue than the other applicants. Its charters have provided service to more U. S. points than have those of any other applicant.

American Flyers plans to obtain DC-8 jet aircraft in the fall of 1966 if certificated to provide transatlantic ser-

vice. It has been advised by Douglas that this aircraft will be available for delivery in October 1966 at a base price of $7,805,500 plus $400,000 for additional equipment. The record contains the written opinion of American Flyers' banker that the carrier is capable of obtaining the necessary financing upon reasonable terms for the acquisition of two of these aircraft at a cost of $18 million.

Qualifications—Modern. Modern has operated for a long period on a relatively modest basis. Its total revenues were $1,005,491 in 1962, $822,488 in 1963, and $1,067,892 in 1964. It experienced a net profit of $96,581 in 1962 and losses of $76,108 and $74,376 in 1963 and 1964. It states that these losses were caused by excessive maintenance costs on faulty Constellation engines, a situation which has been remedied. Modern's brief points out that its July 1965 report shows a $97,832 profit.

Modern owned three DC-7C aircraft, two L-049 Constellations, and one L-749 Constellation at the time of hearing. It plans to lease three additional DC-7C aircraft if it obtains transatlantic authority.

As of March 31, 1965, Modern's balance sheet showed a

negative working capital position and a negative net worth. Three-eighths of the company's outstanding stock was sold for $50,000 in March 1965, indicating that the purchaser appraised the company's total net worth at that time as approximately $133,000. Modern's exhibits contain no showing of ability to expand into a jet operation, nor, for that matter, does Modern explain how it would finance the expansion required by a transatlantic operation with piston aircraft.

(28782, 28783)

While it is true, as Bureau counsel points out, that Modern has been able to get along on a negative net worth and negative working capital position, this is not the type of situation which allows the cushion for temporary setbacks which in the nature of things are to be expected. The fact cannot be ignored that two of the present applicants, ONA and USOA, lost such substantial sums of money that they suffered financial failure.

While Modern has succeeded in continuing operations on a modest scale over a long period of time, there is no assurance that it would be able to succeed in a greatly expanded scale of operations. In fact, the record of supplemental carriers contains many instances of failure upon such expansion. For example, Standard Airways conducted a modest operation over a long period without failure, but when it expanded into a larger different operation it soon suffered financial reverses which led to termination of its operations. Modern will either so limit its operations that its contribution is insignificant or run undue risk of failure. It has not shown availability of capital or plans to support the multiplication of its operations which a significant transatlantic operation would require.

Qualifications—ONA. ONA is reactivating its operations after a dormant period of some 2 years, during which it

28783

went through a bankruptcy proceeding. The affidavit of Mr. George W. Tompkins, its president, which accompanied the bankruptcy petition, stated that the carrier's financial reverses were caused mainly by the fact that its aircraft (DC-7's) had become obsolescent and could not be operated economically in the light of competition of other carriers offering jet aircraft.

ONA instituted proceedings under section 302 of Chapter XI of the Bankruptcy Act by filing a petition in the District Court of the United States for the Eastern District of New York on October 28, 1963, in which it stated that it was insolvent and that it intended to propose an arrangement pursuant to Chapter XI. It attached to the petition a balance sheet as of October 4, 1963, showing assets of $747,342, liabilities of $2,088,535, and a deficit of $1,341,193. Its summary of debts and assets submitted to the court with a certificate of its vice president, dated January 24, 1964, shows debts totaling $3,514,186 and assets totaling $527,093.

A plan of arrangement was confirmed by the referee in bankruptcy on July 8, 1965. The plan provides that (1) priority tax and governmental agency claims be paid on confirmation, (2) priority wage claims be paid 25 percent in cash on confirmation and the balance in 10 monthly installments, (3) unsecured creditors' claims of $100 or less be paid 25 percent in full settlement on confirmation, and (4) unsecured creditors' claims of more than $100 be paid 10 percent in full settlement (2½ percent in 12 months, 5 percent in 24 months, and 2½ percent in 30 months).

A previously arranged refinancing program then was carried into effect. Equity capital of $1,500,000 was paid to the company in cash on July 14, 1965, by 14 individuals in return for 15,000 shares of stock, and $1,800,000 was loaned to the company by Empire Trust Company of New

York. The loan matures August 31, 1973, and is to be amortized in 48 monthly installments of $37,500 each, beginning September 30, 1969. Interest is payable at 5 percent

until June 30, 1967, 5½ percent thereafter until maturity, and 6 percent after maturity. The loan is guaranteed by Mr. Neil McConnell, who has been granted an option to purchase 10,000 shares of stock at $100 per share at any time prior to June 18, 1968. Mr. George W. Tompkins, the company's president, has been granted an option to purchase 750 shares of stock at $100 per share at any time prior to July 15, 1970.

The officers and directors of the company are Messrs. George W. Tompkins, chairman of the board and president; G. F. Steedman Hinckley, executive vice president, treasurer, and director; James W. Bailey, vice president of sales and administration and director; Louis Marx, Jr., director; Ernest O'Donnell, Jr., director; Benjamin Regan, director; John W. Starr, director; Frederick S. Wonham, director; and Henry B. Greenberg, director.

Messrs. Tompkins, Hinckley, Bailey, and Starr were with ONA for substantial periods during the time of its previous operation. Mr. Marx is president or chairman of the board of a number of business enterprises (Deerfield Oil Co., Deerfield Enterprises, United Western Oil Co., Frontier Producing Co.). Mr. O'Donnell is a retired U. S. Air Force general; Mr. Regan is a partner of Hornblower & Weeks (investment bankers) and director of several companies; Mr. Wonham is a partner of G. H. Walker & Co. (investment bankers); Mr. Greenberg is a well-known retired professional baseball player.

Most of the new equity funds were provided by Mr. Charles C. Hickox ($500,000), Mr. Hinckley ($374,000), and Mr. Marx ($563,000). These three thus hold 14,375 of the total 15,000 shares of stock outstanding.

ONA plans to conduct operations with two DC-7's and two DC-8's. The DC-8's are on order from Douglas Aircraft Company for delivery in May and June 1966 under an arrangement in connection with which ONA has deposited $1,492,648 on the aircraft, which are to be bought by Boothe Leasing Corporation (a Douglas affiliate) and leased to ONA. The deposit is to be used as a credit against rentals at the rate of 1/96th for each month the aircraft are leased. It is not refundable except that any unused amount will be paid ONA if the lease is not renewed. The carrier's plans call for the lease of the DC-7's.

The key employees of the carrier will consist primarily of former ONA personnel who have either returned to the company or agreed to do so.

Official notice is taken of the fact that the Board's files contain a copy of Overseas National Airways operation specification FAA 1014 "Aircraft Listing" effective October 5, 1965, which shows it to have Douglas DC-7B aircraft Reg. No. 821D, serial No. 45330, Designation 7-99, under lease.

Previous to its business failure, ONA had a long period of operation as one of the largest supplemental air carriers. In 1960, its $28 million revenue represented 46 percent of total supplemental carrier revenue for that year. The carrier was selected by the Board in the earlier phase of the proceeding as one of the three applicants with the most transatlantic charter experience.

Qualifications—TIA. TIA is the second largest and strongest supplemental carrier in assets and scope of operation, standing far above any other except World. In

the year ended September 30, 1965, its revenues were $18,853,163 and its profit $4,851,000.

TIA has owned jet aircraft since the spring of 1962 and was the first supplemental carrier to operate such equipment. It thus has had approximately a year's longer jet experience than World, the other applicant with substantial

jet operating experience. The carrier now owns three jet aircraft (two DC-8F-54 180 passenger and one DC-8-51 153 passenger) and one L-1049G 102 passenger and three L-1049H 102 passenger aircraft. It points out that its operation of jets under lease to Lufthansa from April 1 through October 31, 1965, together with its operation of transatlantic charters under interim certificate, will give it jet experience in the transatlantic in excess of that of Capitol.

Since 1960, TIA's operations have been primarily in the international markets, extending over a large part of the world. It has developed more revenue in commercial charter business in 1964 and 1965 than any other applicant. TIA has sales personnel in Europe and in all areas of the United States, which will be strengthened and expanded to new locations. The operations, maintenance, and service departments will also be substantially increased in both the United States and Europe.

TIA is purchasing two large 258-passenger stretch out convertible jets (DC-8-61F's), with which it asserts it will be possible to make a profit on charter groups at a prorated fare of about 2 cents per passenger-mile. The first of these will be received in April 1967 and would be used in the transatlantic charter market that year.

(28786, 28787)

Qualifications USOA. USOA was for several years one of the larger supplemental carriers, including both charter and individually ticketed operations. In the period from March 1960 through March 1962, USOA rendered transportation for the Department of Defense for revenues of $3,751,449. Its nonmilitary charter revenues totaled $213,842 in 1961, $216,520 in 1962, $267,604 in 1963, and approximately $250,000 in the first 8 months of 1964. However, the applicant is now a nonoperating company without employees and without operating authority.

28787

USOA plans are based on use of six leased DC-7C aircraft. Five are already on lease from C&J Aircraft Leasing Company, a partnership of the former executive vice president of USOA and of the father of USOA's president.

USOA has been a nonoperating company for the past year. Its financial weakness caused the Board to suspend its interim operating certificate on September 24, 1964,[22] and, after hearing, to determine on December 7, 1964, that it is no longer financially fit, willing, and able to hold authority as a supplemental carrier.[23] Thereafter, the Federal Aviation Agency suspended its air carrier operating certificate.

Since the suspension, some $450,000 of debts has been paid by USOA and a long-term indebtedness of $1,500,000 has been forgiven by Ocean Air Tradeways, a partnership owned by stockholders of USOA. In addition, it has reorganized its management. USOA presented a pro forma

[22] Order E-21325, dated September 24, 1964.
[23] Order E-21562, dated December 7, 1964.

balance sheet showing the effects of a planned consolidation of assets of USOA and its wholly owned subsidiary, Air Power Overhaul, Inc., using the USOA balance sheet as of December 31, 1964, the Air Power Overhaul balance sheet as of March 31, 1965, and a written appraisal of a parcel of land. This shows current assets of $382,229, investments in subsidiaries of $362,839, and fixed assets of $908,013. Current liabilities are shown at $716,710 and net worth at $937,790. The current assets are primarily accounts receivable ($178,426) and inventories ($178,334). The fixed assets include $750,000 in land donated by Mr. Cox, the

28788

applicant's principal stockholder, at an appraised valuation. Its cash totals $6,924.

While the carrier indicates an intent to sell or mortgage the land at $750,000 and to sell seven DC-4 aircraft and its DC-4 and DC-6 spare engines, spare parts, and inventories for $750,000, the amount of cash that could be obtained and the date of its receipt are matters left to the realm of conjecture.

The applicant's president testified that he had contacts with 50 to 75 of USOA's former employees who have expressed a desire to return to work but that none were on the payroll at the time of the hearing.

28789

Qualifications—World. World is by far the largest and strongest supplemental carrier from the point of view of assets, scope of operations, and financial strength. On June 30, 1965, it had a positive working capital position of $8,072,511, compared with the negative working capital

positions of the other applicants and Capitol and Saturn ranging from $714,291 for Modern to $3,104,592 for Capitol. Its flight and ground equipment net valuation was $19,439,644, compared to valuations for the others ranging from ONA's $1,750[24] to TIA's $11,690,192. Its stockholders' equity of $12,049,384 compared with that of the others ranging from ONA's negative $1,048,105[24] to TIA's positive $4,210,756.

During the year ended September 30, 1965, World's business brought $29,859,200 revenues and a profit of $9,243,668. World had 390 employees engaged in air transportation on September 30, 1965.

This applicant owned three Boeing 707-373C fan jet aircraft at the time of hearing and had orders for delivery of a fourth in October 1965 and a fifth in May 1966. Its plan of operations contemplates rotation of these aircraft into transatlantic charter service to provide the equivalent of three aircraft available at peak periods. This would constitute the largest jet aircraft offering of transatlantic charter service of any applicant. Its projected aircraft fleet will enable it to perform the planned transatlantic operations and to maintain its 1965 level of military and commercial operations in other areas.

World has an extensive sales organization, including a European regional manager and has planned for offices in

28790

London, Frankfurt, and Paris; its plans call for expenditure of $952,550 in 1966 for sales promotion of the trans-

[24] These figures do not reflect the injection of new capital after the court's confirmation of the plan of arrangement for ONA in July, 1965.

atlantic charter market. World points out that its $201,433 for system advertising in the year ended June 30, 1965, compares with $12,107 by Capitol, $15,230 by Saturn, $14,033 by American Flyers, $206 by Modern, $1,716 by TIA, and none by Zantop.

World has devoted a great deal of effort to development of the incentive type of single entity charter, in which a business firm provides at its own expense a charter flight, perhaps with other expenses paid, for selected personnel as an incentive for high production or morale. There has been no significant development of such charters in the transatlantic market, although they have obvious possibilities in view of the attractiveness of a European trip and the telescoped time schedule now possible with jet aircraft. The applicant plans to market such charters as one of the means of developing business during times outside the summer peak season. This applicant has established a very favorable public image for reliability and quality of performance of charter service.

Qualifications—Zantop. Zantop, based at Detroit Metropolitan Airport, Inkster, Mich., has been a supplemental carrier since mid-1962. However, its operating experience goes back to 1946, when its predecessor partnership was founded by three brothers, Messrs. Howard, Lloyd, and Duane Zantop, who are still the owners and managers. It has steadily added to and upgraded its fleet and at the time of the hearing operated 70 large aircraft (44 C-46, 3 DC-3/C47, 8 DC-6A, 7 AW-650, 1 DC-7B, and 7 DC-7BF). Of these, 43 were owned and 27 leased. The carrier experienced a loss ($90,166) in its fiscal year ended July 31, 1962, but has achieved substantial earnings each year since then ($312,441 for fiscal year 1963, $284,014 for fiscal year 1964,

and $895,600 for the 10 months ended April 30, 1965). It has a strong balance sheet position, with the April 30, 1965, statement showing $5,022,785 assets ($2,232,462 current assets, $19,432 investments, $1,944,847 operating property and equipment, and $826,043 deferred charges), $3,244,109 liabilities ($2,620,985 current liabilities, $539,400 long-term liabilities, and $83,724 deferred credits), and $1,778,674 net worth. It had $297,937 cash on hand or in banks.

In addition to its home base at Detroit, Zantop leases a hangar at Ontario, Calif., and maintains mechanics and routine maintenance facilities in New Jersey, Indiana, Ohio, and Texas, and maintains facilities for handling, loading, and unloading of aircraft at 16 locations on a 24-hour, 7-days-a-week basis. Zantop and its subsidiary, Calhoun Equipment Services, Inc., had 944 employees engaged in air transportation as of June 30, 1965.

Zantop is unquestionably one of the strongest supplemental carriers, but its experience has been limited almost exclusively to cargo transportation. Thus, its report to the Board for the quarter ended September 30, 1965, shows passenger revenue of $100,546, or only a little more than 1 percent of its total transport revenue of $7,928,408.

Zantop has no aircraft presently available for transatlantic charter operations but would obtain the required aircraft following certification. It presented plans based upon use of three DC-7C aircraft which it would acquire and on which it presently has an option. It plans on funding the 1966 operations with existing capital and believes no additional financing to be required.

Qualifications—conclusions. Bureau counsel proposes that the standards of fitness required for the service in-

volved herein, with its long overwater flights to points in Europe, Africa, and the Middle East, in competition with some 30 other carriers, should be that new carriers must be familiar with passenger-generating and handling techniques, strong enough financially to compete effectively with the better known route carriers, and possessed of long-range aircraft which will be acceptable to prospective charterers. These are reasonable requirements. For the reasons set forth elsewhere herein, it is also concluded that the new carriers must be able and willing to provide service with jet aircraft.

The 7 applicants herein include 5 (American Flyers, TIA, Modern, World, and Zantop) of the 11 survivors of several hundred supplemental carriers which started business in the 1945 to 1950 period. ONA and USOA have failed financially, but ONA has obtained new capital. The fact of the others' survival indicates their hard core ability to continue operations through good years and bad and under favorable and adverse circumstances.

It is clear that the need of the transatlantic charter market is for service with jet aircraft and not for additional piston aircraft operations. Accordingly, those applicants who would limit their services to operations with piston aircraft cannot be found fit, willing, and able to provide the air transportation required. Modern, USOA, and Zantop are in this category and their applications must be denied. Denial of USOA's application would be required in any event because of its lack of financial fitness.

World and TIA, the Nation's two largest supplemental air carriers, have long records of successful operations.

They have ample jet equipment on hand to perform transatlantic charter air transportation and have orders for additional jet aircraft which will strengthen their positions

28793

in this respect. Their financial strength is so outstanding that there is no question of their ability from that standpoint.[25] They have the required familiarity with passenger generating and handling techniques. Both operated under temporary authority in the transatlantic charter market during the summer of 1965. World carried 2,916 passengers and TIA 3,058. They are undoubtedly qualified to perform transatlantic charter air transportation.

ONA failed in its past operations, due, at least in part, to the inability of its DC-7 aircraft to compete with jet equipment. However, it has now obtained adequate new capital and, while much smaller in stature than World or TIA, has the financial strength needed for inauguration of the operations it proposes. It will have the required jet aircraft during the 1966 peak season and thereafter. It performed extensive operations in the transatlantic charter market and will utilize in its proposed service a large number of the personnel who participated in the earlier transportation. It has the necessary familiarity with passenger-handling techniques. It is concluded that ONA is qualified to perform transatlantic charter air transportation.

[25] While TIA's working capital figure is a negative one, as is that of all supplemental carrier applicants and Saturn and Capitol, a large part of the current liability figure represents the portion of long term debt payable within the next year. Excluding this element, TIA has a positive working capital showing of about $1 million. It has arranged an $11 million loan from the Bank of America for the purchase of two DC861F stretch-out jets.

(28793, 28794)

American Flyers is the third supplemental carrier which transported transatlantic charter passengers under temporary authority during the summer of 1965. It carried 1,049 passengers during this period. Although smaller in stature than TIA and World, it has a record of successful operation and has demonstrated familiarity with passenger handling techniques in the course of reaching the highest percentage of commercial revenue among the supplemental

28794

carriers. American Flyers will perform its services at the outset with the slower propeller jet Electra, but will soon thereafter obtain full jet aircraft and place them in operation. The availability of its jet aircraft will not be subject to demands of a fixed MATS contract commitment, a factor which may at times limit the availability of the aircraft of TIA and World. The opinion evidence of its banker as to ability to finance the jet purchase, considered in conjunction with its success in financing $5 million for Electra purchase, is convincing that the applicant will be able to make necessary financial arrangements for the jet purchase. It is concluded that American Flyers is qualified to perform transatlantic air transportation.

Ultimate Conclusions. In the light of the matters set forth herein, it is concluded that the growth of the transatlantic charter market and the expected future volume, the lack of aggressive exploitation of the market by U. S. scheduled and Part 295 carriers, the dominance of foreign air carriers, the demand of the public for jet transportation, and the lack of availability of sufficient jet charter capacity indicate a need for more jet charter capacity than existing carriers can be expected to provide in the transatlantic sector. The four applicants qualified to provide such charter transportation with jet equipment can be

expected to depend primarily on newly generated traffic and not to divert traffic in undue amounts from presently authorized U. S. carriers.

These four carriers will contribute in a number of new aspects in the manner that entry of new blood brings such improvements to an industry. Thus World will bring emphasis on development of the incentive plan charter, in which it has considerable experience, as a year-round business, and it will serve west coast points better than the existing carriers. American Flyers will stress new service

for the inland area between the east and west coasts. TIA will be more likely than any other applicant to use stretch out jets in the market at an early date, thus bringing pro rata passenger prices down to the neighborhood of 2 cents per mile. ONA will bring to bear its long experience in transatlantic air transportation.

All of the applicants, as well as Capitol and Saturn, have depended for a large portion of their revenue on military revenues, some obtained under MATS contracts and some under CAM operations. A factor which has led those depending on MATS contracts to seek sources of civilian business has been the Department of Defense policy designed to encourage their development of nonmilitary business by directives requiring that particular percentages of revenues of MATS contractors be derived from commercial sources. In addition, statements of the Secretary of Defense before a Congressional committee have indicated a desire of that Department to use U. S. Air Force aircraft and pilots rather than commercial carriers at a future time. The recommended authorizations will provide a significant opportunity for the new carriers to expand their commercial business.

Argument has been presented that smaller supplemental carriers need expansion into the transatlantic market, but it is without merit in the absence of a showing of qualification to serve the market with the jet aircraft which the public now demands here.

In its previous decision the facts of record led to an estimate of less than 290,000 passengers for the future transatlantic charter market and the Board decided that three supplemental carriers should be certificated. As has been set forth, it is reasonable to conclude that the market volume will be 750,000 passengers in the first full year of

implementation of the service here recommended. This renders a recommendation of four additional supplemental carriers, or a new total of six, consistent with the Board's conclusion in the previous opinion herein that the number of applicants to be authorized should be sufficiently restricted to afford the selected carriers the greatest possible opportunity to conduct profitable operations consistent with the needs of the traveling public for transatlantic charter services.[26] And this latter part of the Board's decision is worthy of note. There is nothing in the Board's findings there that encourages a view elevating the welfare of particular carriers at the expense of needed service. In fact, the Board pointedly adverted to the transatlantic charter market's highly seasonal characteristic, its brief but intense periods of demand, and its directional imbalance. The Board found that in these circumstances no single applicant would have the equipment and personnel to meet the demands of this market and still be able to conduct other services and that no carrier could survive

[26] Order E-20530, dated February 24, 1964, appendix A, p. 13 of mimeo opinion.

on this business alone. Except for some alleviation of the directional imbalance by use of lower fares for European-originated charters, the market's characteristics are in substantially the same posture. But it is now much larger—in fact the expected volume is about triple the size of that viewed in the Board's opinion. In the light of the new developments, it is clear that just as one supplemental would not be adequate for the public need at that time, two are

not adequate now. The reasonably expected market requires the certification of all four of the qualified applicants in addition to Capitol and Saturn. The effective period of the certificates should, of course, run concurrently with the authorizations of Capitol and Saturn.

Recommendation. On the basis of the foregoing findings and conclusions and all the record, it is recommended that the Board find that:

1. The public convenience and necessity require transatlantic air charter services by American Flyers, Overseas National, Trans International, and World.

2. American Flyers, Overseas National, Trans International, and World are fit, willing, and able properly to perform transatlantic air charter transportation and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder.

3. All applications, motions, and requests involved in this proceeding should be denied, except to the extent otherwise indicated.

It is further recommended that the Board adopt the attached order and issue the attached certificates of public convenience and necessity to the aforenamed carriers.

28798

APPENDIX 1

TRANSATLANTIC PASSENGER CHARTER TRAFFIC CALENDAR YEARS 1963-65[1]

Class of carrier	1963 No. of passengers	1963 % of total	1964 No. of passengers	1964 % of total	1965 No. of passengers	1965 % of total
U. S. transatlantic route carriers[2]	32,229	10	21,226	5	37,729[8]	7
U. S. domestic carriers[3]	—	—	—	—	20,625[9]	4
U. S. Part 295 carriers[4]	34,269	10	64,330	15	93,848[10]	18
Total U. S. carriers	66,498	20	85,556	20	152,202	29
Foreign route carriers[5]	257,661	77	329,575	76	321,240[8]	68
Other 402 foreign carriers[6]	8,200	2	15,450	3	33,961[9]	7
1108(b) operators[7]	1,293	1	876	1	1,983[9]	1
Total foreign carriers	267,154	80	345,901	80	357,184	71
Total all carriers	333,652	100	431,457	100	509,386[11]	100

[1] The above information includes civil pro rata and single entity charter traffic between the U. S.-Europe/Middle East. A round-trip flight or passenger is counted twice.

[2] Pan American and TWA.

[3] Continental.

[4] American Flyers, Capitol, Flying Tiger, Modern, ONA, Saturn, TIA, and World.

[5] Aerlinte, Air France, Air India, Alitalia, BOAC, El Al, Iberia, KLM, Lufthansa, Qantas, Sabena, SAS, and Swissair.

[6] Air Canada, Adria Airways (Yugoslavia), Balair AG (Switzerland), British Eagle International, Ltd., Caledonian Airways (Prestwick) Ltd., Icelandic Airlines, Inc., and KAR-AIR Oy (Finland). Südflug, Süddeutsche Fluggesellschaft mbH (Germany) has not conducted any operations under its 402 permit.

[7] Belgian International Air Service, Braathens S. A. F. E. Air Transport A/S (Norway), British United Airways, Ltd., Globe Air Ltd. (Switzerland), Interocean Airways, S. A. (Luxembourg), Martin's Air Charter (the Netherlands), Ostermanair Charter AB (Sweden), Shannon Air Limited (Ireland), Sobelair, S. A. (Belgium), Transair Sweden AB, and United Arab Airlines.

[8] January through September actual traffic expanded to 100% on basis of 1963 and 1964 IATA experience of 85% of yearly total during these 9 months. This probably understates 1965 total in view of lengthening of peak season.

[9] Actual traffic through August 1, 1965—estimated for remainder of year.

[10] Actual January-November traffic only.

[11] This is estimated total for portions explained in footnotes 8 and 9.

Source: Supplemental exhibit BER-3 and posthearing exhibits received from carriers by stipulation.

28799

APPENDIX 2

YEARLY INCREASES OF TOTAL TRANSATLANTIC CHARTER PASSENGERS 1957-1965

Year	Number of passengers	Percent increase over previous year
1957	70,644	
1958	92,057	30%
1959	108,318	18
1960	164,255	52
1961	203,959	20
1962	—	—
1963	333,652	28[1]
1964	431,457	30
1965	509,386[2]	18[2]

[1] The 1962 figure for actual total charter traffic is not in the record and 28% is the annual rate of increase for the 2-year 1961 to 1963 period. However, estimates of record indicate that there was a lesser rate of increase for 1962 and a greater rate for 1963. Using figures which are in part estimates, the exhibit of World shows totals which indicate increases of 11% in 1962, 50% in 1963, and 33% in 1964.

[2] This is an estimated figure so far as concerns the latter part of the year. See appendix 1.

APPENDIX 3

(See opposite) ☞

Monthly Total Transatlantic arter Traffic U S. and Foreign IATA Carriers and U S Part 295 Carriers

Month		1963 No Passengers	1963 % of year s total	1964 No Passengers	1964 % of year's total	1965 No Passengers	1965 % of year's total
Jan.	IATA	4,357	1	7,122	2	7,670	
	Pt. 295	0		0		108	
						7,778	2
Feb	IATA	7,181	2	7,500	2	7,256	
	Pt 295	0		0		110	
						7,366	2
Mar.	IATA	14,357		15,958	4	14,059	
	Pt 295	166		0		481	
		14,523	4			14,540	3
Apr	IATA	15,047		22,178	5	22,302	
	Pt 295	202		0		667	
		15,249	5			22,969	5
May	IATA	23,997		36,408		36,380	
	Pt 295	152		325		3,637	
		24,149	7	36,733	9	40,017	9
June	IATA	31,418		39,392		39,803	
	Pt. 295	5,500		11,964		16,759	
		36,918	11	51,356	12	56,562	13
July	IATA	54,704		60,310		59,678	
	Pt. 295	11,502		20,125		26,536	
		66,206	21	80,435	19	86,214	19
Aug	IATA	50,372		61,322		56,876	
	Pt 295	12,554		22,131		30,812	
		62,926	20	83,453	20	87,688	19
Sept	IATA	42,883		46,457		61,100	
	Pt 295	4,193		8,959		12,157	
		47,076	15	55,416	13	73,257	16
Oct	IATA	29,535	9	35,751			) IATA
	Pt 295	0		497		2,07	) 53,876 est
				36,248	9		) for 3 mos.
Nov	IATA	7,357	3	10,999			)
	Pt. 295	0		113		502	)
				11,112	3		) 12 est
Dec	IATA	4,882	2	7,404			)
	Pt. 295	0		216			)
				7,620	2		)
Total	IATA	286,090		350,801		359,000 est	
	Pt 295	34,269		64,330		93,848	
		320,359	100	415,131	100	452,848	100

28800

1635a

(28800)

History and Distribution of Peak Season
Pro Rata Transatlantic Charter Traffic
1957 - 1964

Year	U.S. Carriers			Foreign Flag Carriers			Grand Total
	Route	Part 295	Total	Route	Charter	Total	
1957	10,403	17,123	27,526	11,207	-	11,207	38,733
1958	11,127	23,822	34,949	15,498	-	15,498	50,447
1959	17,240	24,199	41,439	22,432	-	22,432	63,781
1960	23,745	22,301	46,046	83,506	-	83,506	129,552
1961	26,048	37,203	63,251	105,443	-	105,443	168,694
1962	17,791	48,827	66,618	119,090	-	119,090	185,708
1963 1/	9,865	31,676	41,541	160,705	4,335	165,040	206,581
1964 1/	10,684	56,991	67,675	233,516	10,674	244,190	311,865
	Percent of Total						
1957	26.9%	44.2%	71.1%	28.9%	-	28.9%	100
1958	22.1	47.2	69.3	30.7	-	30.7	100
1959	27.0	37.9	64.9	35.2	-	35.1	100
1960	18.3	17.2	35.5	64.5	-	64.5	100
1961	15.4	22.1	37.5	62.5	-	62.5	100
1962	9.6	26.3	35.9	64.1	-	64.1	100
1963	4.8	15.3	20.1	77.8	2.1	79.9	100
1964	3.4	18.3	21.7	74.9	3.4	78.3	100

1/ Includes a limited amount of entity traffic for 1963 and 1964.

TREND OF TOTAL AIR TRAVELERS BETWEEN
THE UNITED STATES AND EUROPE
(In Thousands)

Fiscal Year	Actual Passengers 1/	Trend Values
1957	1,055.2	1,072.6
1958	1,219.8	1,250.2
1959	1,464.8	1,457.2
1960	1,748.9	1,698.4
1961	2,092.0	1,979.6
1962	2,274.7	2,307.3
1963	2,640.3	2,689.3
1964	3,084.4	3,134.6
1965		3,653.5
1966		4,258.4
1967		4,963.5

1/ From Immigration and Naturalization Service.

APPENDIX 5

28802

(28802)

1037a

APPLICANTS' FORECAST OF NUMBER OF ONE-WAY
TRANSATLANTIC CHARTER PASSENGERS

	Number of passengers		Share of market	
	1966	1967	1966	1967
American Flyers	906,662	1,087,996	43,387	79,934
Modern	821,492		20,800	
ONA	391,400 1/		59,200 2/ 27,000 3/	
USOA	1,000,000		28,956	
TIA	526,509 1/	697,242 1/	56,520	83,297
World	642,000 4/ 698,000 5/ 753,000 7/		80,000 2/ 79,000 3/	
Zantop	794,372 4/ 826,146 5/ 889,696 6/ 985,696 8/		19,950	

1/ Market forecast only for pro rata charter passengers during peak season (April-September).
2/ As one of three certificated transatlantic supplemental carriers.
3/ As one of six certificated transatlantic supplemental carriers.
4/ No additional supplemental carrier certificated.
5/ One additional supplemental carrier certificated.
6/ Three additional supplemental carriers certificated.
7/ Four additional supplemental carriers certificated.
8/ Six additional supplemental carriers certificated.

SUMMARY OF APPLICANTS' OPERATING PROPOSALS FOR 1966

	American Flyers			Modern
Aircraft to be used	Electra 188C	Constellation L-1049G	Total	DC-7C
Number of aircraft	2 Electras	5 Constellations	2 Electras 5 Constellations	[illegible]
Aircraft passenger capacity	92	1 (98) 1 (103) 3 (105)	2 (92) 1 (98) 1 (103) 3 (105)	104
Number of one-way flights	208	416	624	2[illegible]
Aircraft miles	1,114,464	2,228,928	3,343,392	1,71[illegible]
Revenue miles				1,5[illegible]
Nonrevenue miles				[illegible]
Passengers			43,387	
Passenger revenue	$2,652,424	$5,015,088	$7,667,512	$4,[illegible]
Operating expense:				
Flying operations			$1,[illegible]59,318	$1,533,161
Maintenance			1,690,457	8[illegible],204
General serv. & adm.			2,465,262	958,123
Depreciation & amortization			423,031	28,[illegible]
Total operating expense			$6,53[illegible],068	$3,[illegible]
Net operating profit			$1,12[illegible],443	$1,[illegible]
Revenue per rev. plane-mile				
Revenue per aircraft mile	$2.38	$2.25		$[illegible]
Revenue per passenger-mile				
Cost per aircraft mile				$[illegible]

SUMMARY OF APPLICANTS' OPERATING PROPOSALS FOR 1966 (CONT'D)

	ONA			TIA
Aircraft to be used	DC-8F55	DC-7 (lease)	Total	DC-8F 1/
Number of aircraft	2 DC-8's	2 DC-7's	2 DC-8's 2 DC-7's	2 DC-8F's 1/
Aircraft passenger capacity	189	99	2 (189) 2 (99)	180 1/
Number of one-way flights			448	314
Aircraft miles	1,121,000	448,000	1,569,000	1,913,000
Revenue miles	928,000	364,000	1,292,000	1,626,540
Nonrevenue miles	193,000	84,000	277,000	286,650
Passengers	50,085	10,192	60,277	56,250
Passenger revenue	$4,972,000	$908,000	$5,880,000	$7,276,000
Operating expenses:				
Flying operations	$ 966,000	$402,000	$1,368,000	$1,632,618
Maintenance	623,000	225,000	848,000	1,176,837
General serv. & adm.	1,780,000	265,000	2,045,000	2,136,092
Depreciation & amortization	42,000	-	42,000	679,462
Total operating expense	$3,411,000	$892,000	$4,303,000	$5,625,009
Net operating profit	$1,561,000	$ 16,000	$1,577,000	$1,652,265
Revenue per rev. plane-mile	$5.36	$2.49		
Revenue per aircraft mile	$4.33	$2.02		$3.80
Revenue per passenger mile	2.835¢	2.520¢		2.485¢
Cost per aircraft mile	$3.18	$1.99		$2.94

1/ Plus 1 DC-8-51 (153-seat) to be used for backup and substitute.

SUMMARY OF APPLICANTS' OPERATING PROPOSALS FOR 1966 (CONT'D)

	USOA	World	Zantop
Aircraft to be used	DC-7C	Boeing 707-373C	DC-7C
Number of aircraft	6 DC-7C's	1 to 3 707-373C's (as required)	3 DC-7C's
Aircraft passenger capacit	104	177 average	95
Number of one-way flights	394	462	210
Aircraft miles	1,339,600	2,195,936	1,365,000
Revenue miles	1,098,472	1,902,376	1,023,750
Nonrevenue miles	241,128	293,560	341,250
Passengers	28,956	81,774 average	8,975
Passenger revenue	$3,020,347	$8,659,665	$2,500,000
Operating expense:			
Flying operations	$1,607,520	$1,802,863	
Maintenance	475,558	1,177,022	
General serv. & adm.	712,578	3,046,054	
Depreciation & amortization	8,400	817,820	
Inflationary provision		90,389	
Total operating expense	$2,804,056	$6,934,148	$2,346,750 2/
Net operating profit	$ 296,291	$1,725,517	$ 153,250
Revenue per rev. plane-mile			
Revenue per aircraft mile		$3.943	
Revenue per passenger-mile			
Cost per aircraft mile		$3.158	

2/ $1,955,625 direct, $391,125 indirect.

PROJECTED TRANSATLANTIC CHARTER YIELDS PER PASSENGER-MILE BY AIRCRAFT TYPE 1/
(in cents)

Carrier	Piston	Prop Jet	Jet
American Flyers	2.267	2.446	1.706 2/ (1967)
Modern	2.796		
ONA	2.068		2.347
USOA	2.168		
IIA			2.224 2.117 3/ (1967) 1.724 4/ (1967)
World			2.087 5/ 2.391 6/
Zantop	2.018		

1/ Data relates to 1966 except where indicated otherwise.
2/ With 251-seat configuration.
3/ With 180-seat configuration.
4/ With 247-seat configuration.
5/ With 189-seat configuration.
6/ With 165-seat configuration.

Note: It was assumed that all aircraft would be 100 percent occupied.

APPLICANTS' FINANCIAL STATUS

APPENDIX 9

	Am. Flyers (March 31, 1965)	Modern (Sept. 30, 1965)	ONA (July 19, 1965)	TIA (April 30, 1965)	USOA (Dec. 31, 1964)	World (Sept. 30, 1965)	Zantop (April 30, 1965)
Current assets	$ 829,156	$ 993,213	$1,847,222	$ 1,809,033	$171,290 1/	$16,554,162	$2,232,463
Investments and special funds	-	15,784	3,125	853,182	392,840	446,500	19,432
Deposits on aircraft	-	-	1,492,648	902,098	-	-	-
Property and equipment	3,433,807	892,137	229,288	11,989,043	132,412	20,561,531	1,944,847
Deferred charges	52,612	99,340	144,263	282,461	5,474	-	826,043
Total assets	$4,315,575	$2,000,474	$3,716,546	$15,835,817	$702,016	$37,562,193	$5,022,785
Current liabilities	$1,744,817	$ 838,142	$ 204,188	$ 4,565,987	$941,737	$ 6,657,306	$2,620,985
Long-term debt and other liabilities	2,378,497	1,029,902	2,004,818	6,728,442	25,164	13,326,894	539,400
Deferred credits	-	5,947	-	219,247	-	4,151,007	83,724
Stockholder equity	192,261	126,483	1,507,540	4,322,141	(264,885)	13,426,986	1,778,676
Total liability and net worth	$4,315,575	$2,000,474	$3,716,546	$15,835,817	$702,016	$37,562,193	$5,022,785

1/ Excludes $100,000 tentative reserve to provide for possible bad debts or uncollectible accounts, collection commissions, and other related expenses.

ANNUAL INCOME STATEMENTS

APPENDIX 10

	Air Flyers (Sept. 30, 1965)	Modern (Sept. 30, 1965)	ONA (Dec. 31, 1963)	TTA (Sept. 30, 1965)	USOA (June 30, 1964)	World (Sept. 30, 1965)	Zantop (Sept. 30, 1965)
Operating revenue	$7,510,101	$1,607,255	$3,377,370	$18,853,163	$2,678,899	$29,859,200	$24,075,597
Operating expense:							
Flying operations	$2,605,393	$ 573,123	$1,798,767	$ 5,031,149	$1,271,396	$ 7,581,261	$ 9,279,248
Maintenance	1,713,184	279,132	805,621	3,578,629	484,661	5,430,159	7,993,705
General serv. & admin.	1,909,905	424,764	1,388,793	2,974,115	1,465,856	4,143,076	4,007,081
Depreciation & amortization	900,650	90,147	308,596	1,433,076	157,873	2,284,112	2,338,873
Total operating expense	$7,129,132	$1,367,166	$4,301,777	$13,016,970	$3,379,786	$19,438,608	$23,618,907
Operating profit (loss)	$ 380,968	$ 240,088	$ (924,407)	$ 5,836,194	$ (700,887)	$10,420,592	$ 456,690
Nonoperating income (expense)	$ (174,055)	$ (15,351)	$ (66,789)	$ (984,594)	$ 269,088	$(1,176,924	$ (278,351)
Net income before income tax	$ 206,914	$ 224,736	$ (991,197)	$ 4,851,599	$ (431,799)	$ 9,243,668	$ 178,338
Income taxes	$ 96,866	$ 40,822		$ 2,558,213		$ 4,174,141	$ (44,986)
Net income after income taxes	$ 110,048	$ 183,914	$ (991,197)	$ 2,293,386	$ (431,799)	$ 5,069,527	$ 223,323
No. of air transport. employees	187	69	24	214		390	998

Source: Carrier quarterly reports filed with the Board.

APPENDIX 11

COMPARISON OF RATES CHARGED BY PAN AMERICAN AND TWA WITH TIA's RATES

New York-Paris Market

Class of service	Round trip fare	Fare per rev. psgr. mile
Pan American and TWA:		
First class	$754.30	10.38¢
Peak economy	526.30	7.24
Off-peak economy	440.80	6.06
21-day excursion	341.80	4.70
TIA:		
1965 peak-season pro rata charter	$274.38	3.77¢
Proposed pro rata charter:		
1966	$180.66	2.485
1967	$147.44	2.028

(28811)

28811

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corporation, Overseas National Airways, Inc., Trans International Airlines, Inc., and World Airways, Inc.;

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective

3. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied;

4. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON,
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

(28812)

28812

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORPORATION

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct

business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may

be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the

(28813)

privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on and shall terminate April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on

28814

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

OVERSEAS NATIONAL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct

business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds,

28815

after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the

privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on and shall terminate April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on

(28816)

28816

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

TRANS INTERNATIONAL AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct

business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds,

after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the

(28817)

privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on and shall terminate April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the Seal of the Board to be affixed hereto, on the

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on

28818

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

WORLD AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct

business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds,

after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the

privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on and shall terminate April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on

(29582)

29582

Order No. E-24240

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Served: September 30, 1966

DOCKET 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

Decided: March 11, 1966

Authority to engage in transatlantic inclusive tour charters, subject to the terms, conditions and limitations of Part 378 of the Special Regulations, awarded to Capitol Airways, Inc., Saturn Airways, Inc., and any supplemental air carrier subsequently certificated in the *Reopened Transatlantic Charter Investigation,* Docket 11908, *et al.,* such authority to terminate on April 18, 1969.

Part 378 of the Special Regulations amended to cover the operation of inclusive tour charters in the transatlantic market.

Part 295 of the Economic Regulations amended so as to include inclusive tour charters within the definition of "charter flight."

(29582, 29583, 29584)

APPEARANCES:

Robert M. Beckman for American Flyers Airline Corporation.

Albert F. Beitel and *William A. Wildwack, Jr.* for Modern Air Transport.

Howard S. Boros for Overseas National Airways.

Robert M. Lichtman and *Peter O. O'Connell* for Saturn Airways and Capitol Airways.

Clayton L. Burwell for Trans International Airlines, Inc.

Martin L. Friedman and *Judah Best* for United States Overseas Airlines.

Jerrold Scoutt, Jr. for World Airways.

James H. French for Zantop Air Transport.

Hubert Schneider, Elihu Schott and *Jerry W. Ryan* for Pan American World Airways.

29583

Joseph F. Healy, Jr. and *Edmond E. Harvey* for Trans World Airlines.

Charles A. Hobbs for American Society of Travel Agents.

Howard G. Feldman for the Bureau of Operating Rights.

29584

OPINION

BY THE BOARD:

By Order E-22686, adopted September 23, 1965, the Board reopened the *Transatlantic Charter Investigation*, Docket 11908, *et al.*, to determine whether the public convenience and necessity require the grant of inclusive tour authority to Capitol Airways, Inc. (Capitol), Saturn Airways, Inc. (Saturn), and any supplemental air carrier subsequently certificated in the reopened proceeding now in

progress.[1] Capitol and Saturn are presently operating pursuant to supplemental certificates authorizing transatlantic charter operations, under conditions which preclude charters to persons engaged in the sale of individually ticketed transportation to members of the general public.[2] The proposed inclusive tour authority would permit those carriers to charter to tour operators, who would utilize the chartered aircraft in providing packaged tours to groups formed from the general public. There is also pending before the Board, in another phase of this proceeding, the question of certification of additional supplemental carriers to provide transatlantic charter services,[3] and our determination herein will also decide the question of whether

29585

any additional carriers who may be so certificated should receive inclusive tour authority. The question of inclusive tour authority in geographical areas other than the transatlantic is treated in the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*[4]

In response to Order E-22686, briefs were filed by nine supplemental air carriers,[5] two trunkline air carriers,[6] the

---

[1] This action was taken in light of the fact that the Board was presented with similar issues in the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*

[2] See Appendix A to Orders E-20530 and E-20531, October 8, 1963.

[3] See Order E-21966, March 30, 1965.

[4] See Orders E-23350 and E-24237.

[5] American Flyers Airline Corp., Modern Air Transport, Inc., Overseas National Airways, Inc., Saturn-Capitol (joint brief), Trans International Airlines, Inc., United States Overseas Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

[6] Trans World Airlines, Inc. (TWA) and Pan American World Airways, Inc. (Pan American).

American Society of Travel Agents, and Bureau Counsel. Oral argument was held before the Board on October 13, 1965, and the matter now stands submitted for decision.

Upon consideration of the record, we now conclude that the Board's earlier decision of October 8, 1963,[7] should be reversed and that inclusive tour charters should be authorized. Accordingly, we will issue to Capitol and Saturn amended certificates providing for inclusive tour authority, which shall expire on April 18, 1969, the date of the expiration of their basic transatlantic authority. We will also authorize inclusive tours for any other supplemental carriers to whom transatlantic charter certificates are given, subject to an April 18, 1969, expiration date.[8]

29586

The 1963 decision and subsequent events. The Board's original denial of inclusive tour charter authority was bottomed upon the examiner's recommended decision to that effect. The examiner had concluded that while inclusive tours would tap new markets, particularly among lower income groups, they would also expose Pan American and TWA, the two certificated transatlantic route carriers, to diversion of a substantial volume of their business. In his view, the inclusive tour proposal, taken together with

---

[7] Orders E-20530 and E-20531, Appendix A.

[8] TWA and Pan American raised a question as to whether the present stage of this proceeding is to be considered as a reconsideration of the earlier decision or, as suggested in our order of reopening, a reexamination of a decision that had not yet become final because of lack of Presidential approval. We need not reach this question since it is clear that in either event the Board is entitled to reconsider the issue at this time.

(29586, 29587)

the split charter proposal,[9] would have serious competitive implications which might be overlooked in the interest of developing new areas of air travel, if the transatlantic services of the route carriers were in a state of normalcy. However, in view of the poor earnings picture for these carriers for 1961 and prior years, the examiner concluded that the inclusive tour authority should not be authorized. The Board affirmed these conclusions, stating that the diversion potential was "not warranted by the attendant benefits of allowing such charters *at the present time*." [10]

At that time, the economic condition of our U. S. flag transatlantic route carriers was characterized by extremely low earnings in the recent past and an uncertain outlook for the future. There had been a steady downward trend in U. S. flag carrier participation in the North Atlantic

29587

route market through the years. At the same time, the carriers' earnings for the several years prior to the Board's decision were well below that which would be required to sustain healthy operations for any long-term period. Thus, as shown in the table on page 6, in each year during the period 1958 through 1962 Pan American's earnings were well below a reasonable level, and in all but the last of those years, TWA suffered net losses.

---

[9] This was the proposal to permit carriers to combine two separate groups on one aircraft. The Board determined to include such authorizations in the certificates issued to the carriers. See Orders E-20530 and E-20531, Appendix A, October 8, 1963, pp. 32-40.

[10] Orders E-20530 and E-20531, Appendix A, p. 34, underscoring added.

The years 1958-1962 encompassed the period of inauguration of service with jet aircraft and the integration of sizeable jet fleets. As in other geographical areas, including the U. S. domestic air transportation system, the increased capacity associated with jet aircraft acquisitions substantially exceeded the carriers' traffic requirements, resulting in declining load factors. Moreover, there was the continuing prospect of mounting capacity, particularly in the light of the fact that their international competitors were also purchasing jets in substantial quantities, and there were serious doubts as to where the carriers would find passengers to fill the empty seats. The problems were compounded by the fact that the number and strength of the foreign flag competitors had increased significantly. Indeed, the apparent plight of the U. S. flag carriers caused such concern as to give rise to radical proposals for revisions of the transatlantic route structure.[11] It was in this context that the Board was unwilling to embark on an experiment that could result in diversion of revenues from the U. S. flag carriers, even though, as the Board recognized, there had been some recent improvement in carrier earnings.

29588

However, we now have the full results for the years 1963 through September 30, 1965. These results show a sharp improvement over the period 1958-62. The downward trend in load factors has been reversed and earnings have dramatically improved. For example, whereas TWA suffered net losses during every year in the period 1958-61, its net

[11] See Order E-18301, May 4, 1962, discussed by the examiner in his recommended decision at pp. 80-81.

annual earnings during the period 1963 through the 12 months ended September 30, 1965, ranged between 19 and 27 million dollars. Similarly, the combined return on investment for both carriers, which had been negative for TWA and marginal for Pan American in the period 1958-61, has now risen to well above the 10.25% rate of return which we have found reasonable for comparable domestic trunkline operations,[12] reaching a high point of over 25% in the case of TWA in 1965.

29589

Financial and Operating Results of Pan American (Atlantic Division) and TWA (International) for the Period 1958–September 30, 1965

	Load Factor		Net Earnings (000)		Return on Investment	
	PAA	TWA	PAA	TWA	PAA	TWA
1958	59.6%	54.2%	$ 3,136	($ 3,839)	3.80%	– 5.87%
1959	69.7	59.7	8,731	(4,445)	6.75	– 6.63
1960	61.3	58.9	8,300	(6,802)	6.48	–15.77
1961	49.2	47.3	4,933	(13,711)	4.31	–11.17
1962	48.1	48.9	6,671	6,812	5.65	12.76
1963	48.7	46.9	17,107	19,303	11.80	23.58
1964	53.0	54.4	14,077	17,671	10.68	20.16
Year ending Sept. 30, 1965	52.5	55.1	20,774	27,448	11.76	25.87

Source: CAB Handbook of Airline Statistics, Form 41 Reports.

[12] *General Passenger Fare Investigation*, Order E-16068, November 25, 1960.

It is interesting to compare the most recent results with the year 1962, the last calendar year for which the Board had information at the time of its prior decision. Thus, although the 1962 results were more favorable than those of the earlier years, load factors for Pan American and TWA in the 1965 period were 9.1% and 12.7% above those for 1962, and net earnings were 211% and 303% higher.

Thus, contrary to our fears in 1963, the basic financial and operational soundness of Pan American and TWA may no longer be questioned. These carriers are both well established in the transatlantic market, and rank first and second in terms of passengers carried. The transatlantic operations of each carrier are supported by and integrated with large air transportation networks in other geographical areas. They are well financed and well equipped and, while they are engaged in keen competition with a large number of foreign air carriers, such competition is conducted within a regulatory framework, including collective rate controls through IATA as well as regulation by the Board, which gives reasonable assurance of profitable operations. The difficulties experienced by Pan American and TWA which so heavily influenced us in our earlier decision, must be regarded as being of a transitory nature, similar in large part to problems which were being faced by airlines generally, growing out of the transition from piston to jet equipment.

In sum, it is clear beyond any reasonable doubt that the prime basis upon which we rejected inclusive tour authority in our earlier decision has disappeared with the passage of time. In our judgment, therefore, the U. S. flag route operators are well able to absorb the modest amounts of diversion that may result from the operation of inclusive tour charters by the supplemental carriers.

Diversion. Our prior conclusions on diversion were based primarily on two considerations. The first of these considerations was the extent to which travel agents, upon whom Pan American and TWA depend heavily for the sale of air transportation, would continue to be a sales force for

29591

those carriers if they are authorized to solicit individual members of the public for low-cost inclusive tours on chartered aircraft. In this regard, the route carriers argue that travel agents who have committed themselves to inclusive tour charters will have a powerful economic incentive to promote such charters in order to fill up their planes, and that they will therefore tend to divert traffic which would normally travel on the scheduled carriers. However, while some diversion of this sort may occur, it does not appear that the economic incentives of the vast bulk of travel agents will be affected. There is no basis for the assumption that the typical travel agent will undertake tour operations for his own account. Organizing such tours will normally involve substantial commitments, as well as financial risks, in connection with chartering aircraft, reserving hotel space and the like, as well as heavy marketing and promotional expenditures. Charter tour operations will be undertaken primarily by the larger or wholesale travel agents who possess the facilities and financial resources which are required in order to package and market the tours. It is not to be expected, therefore, that the bulk of the travel agents will be subject to the economic pressure of having to fill chartered aircraft. On the contrary, since the agent's commission is based on a percentage of the tour fare, the individual travel agent will have a greater incentive to sell the higher priced tour on a scheduled carrier.

The second factor upon which we based our concern with potential substantial diversion was the significant fare dif-

29592

ferential between inclusive tours via the scheduled carriers and similar tours via supplemental carriers. The examiner

noted that, since the route carriers could not solicit the general public under their group fare tariff, the saving to a traveler on a round-trip New York-London trip would amount to approximately $200, based upon the standard economy IATA fare, and the Board felt that this $200 differential would "increase the diversion potential to a degree not warranted by the attendant benefits of allowing such charters at the present time."[13] In reaching this conclusion, we took as given the existing fare structure, whereas it is apparent that the fare structure is a matter well within the control of the scheduled carriers. Obviously, among the means which the route carriers have to meet the additional competition offered by inclusive tours is their own ability to offer promotional fares which will appeal to persons who would not otherwise have the means to pay the higher economy fare and who would prefer to use the services of the scheduled carriers. Indeed, the IATA carriers now offer various promotional fares that are significantly below the standard economy fare. These include a 21-day round-trip excursion fare of $300 for a New York-London trip. The various promotional fares in the transatlantic market now account for the bulk of the passengers traveling in the economy class during the peak season.[14]

---

[13] Orders E-20530 and E-20531, Appendix A, p. 34.

[14] On the basis of statistical data supplied to the Board by TWA and Pan American during the 1964 peak season, transatlantic passengers traveling on the various promotional fares of those carriers (low-level economy, 21-day excursion and group fares) totaled 236,990, compared with 177,628 who utilized peak economy fares. These figures cover the period May 17-September 26, 1964, with the single exception of TWA's traffic between July 5 and August 22, a period for which that carrier failed to submit data.

29593

In addition, the members of IATA have agreed to effectuate in the 1966 summer season a tour-basing fare under which travel agents selling inclusive tours on scheduled carriers could offer a reduced air fare of $270 in the New York-London market.[15] Thus, it is apparent that the $200 differential relied upon in our earlier opinion considerably overstates the price advantage of an inclusive tour charter.

Moreover, price is clearly not the sole factor influencing a traveler's decision as to the choice of carrier or service and when all factors are taken into consideration, we believe that it is unlikely that the operation of inclusive tour charters can pose any significant threat to the established route operators. The services offered by the scheduled carriers are clearly superior to those which can be provided by the supplementals. Thus, persons who wish to take advantage of the low-cost inclusive tours necessarily must sacrifice the ability to select from among a large number of schedules. They must subject themselves to the rigidities of a fixed itinerary, as well as to traveling and sharing facilities with a group of strangers for an extended period of time.

29594

Moreover, the selling resources of the route carriers, in terms of travel agency coverage, ability to advertise in mass media, etc., dwarf the capability of the supplemental carriers, and the route carriers possess the initial advantage of established market reputations among travelers. In

[15] The fact that the carriers have agreed upon these low promotional fares is striking evidence of their own collective conclusion that low-fare services, appropriately restricted, can tap new markets without unduly diverting from their standard fare services.

short, there is no reason to believe that the diversion which may take place cannot be absorbed by normal traffic growth in the transatlantic market.[15a] And in our judgment, this diversion would not justify withholding from the supplemental carriers authority to conduct an experimental service for a temporary period, in light of the potential public benefits which may flow from inclusive tour charter services.

Need for inclusive tours. As the examiner found in this proceeding, the testimony of travel agents appearing on behalf of various applicants and the American Society of Travel Agents indicates that a program designed to enable travel agents to charter aircraft for transportation of inclusive tours would tap a new low-income travel market which had not been reached by the scheduled services of the IATA carriers. The examiner reviewed the evidence concerning inclusive tour charters operated from Great Britain which are in major respects comparable to the inclusive group tours in issue in this proceeding. He noted the remarkable growth in British inclusive tours from 45,995 passengers in 1956 to 198,689 passengers in 1961.[16] The examiner also discussed the carriers' forecasts concerning

the traffic generating effect of inclusive tour charters. While conceding that there was no reasonable basis upon which an accurate appraisal of traffic could be made, he concluded

---

[15a] The total annual traffic growth for all air carriers in the transatlantic market was 183,629 passengers from 1962 to 1963, and 617,164 passengers from 1963 to 1964.

[16] The British market has continued to grow impressively after 1961. See recommended decision of Examiner Robert L. Park in the *Supplemental Air Service Proceeding,* Docket 13795, *et al.,* served August 27, 1965, p. 57.

that "it is virtually certain that there is a large potential for all-expense tour charters," and that "a new low-income stratum of traffic, untouched by the economy fares, could be stimulated thus swelling the total charter potential, including planeload charters, well beyond the 1961 experience."[17] We believe the examiner's findings in this regard are amply supported by the record in the proceeding.

Not only do inclusive tours offer the potential of tapping a large new market to air travel, but they will also afford an additional source of income to the supplemental carriers. It must be remembered that these carriers have but limited areas in which to operate. They are denied the right to engage in individually ticketed service.[18] The supplemental carriers must survive on their charter business alone. In our judgment, they should not be excluded from a significant segment of the charter market which they are peculiarly well equipped to serve.

29596

Balance of payments. The route carriers argue that to the extent that inclusive tours generate new low-cost air travel, the tours would adversely affect the balance of payments. TWA cites a recent CAB staff study[19] to the effect that travel abroad by U. S. residents always contributes to the balance of payments deficit, whether or not U. S. flag or foreign flag carriers are used. Both TWA

[17] Recommended decision, p. 58.

[18] Except for short-term operations under unusual circumstances pursuant to section 417 of the Act.

[19] "The Impact on the Balance of Payments of the Air Transport and Aircraft Industries," Bureau of Accounts and Statistics, April 27, 1965.

and Pan American contend that in the event the Board wishes to reconsider its previous determination on inclusive tours, it should reopen the record to take further testimony on the balance of payments question. We are not persuaded that alleged problems regarding balance of payments warrant withholding inclusive tour authority in the transatlantic market.

A similar argument was made in the foreign phase of the *Supplemental Air Service Proceeding*. We there found, in substance, that the maximum potential gold outflow would not be significant even if the unlikely assumption were made that no foreign travel would be generated to this country by the inclusive tour program; that inclusive tours would in fact have a substantial generative effect on foreign travel to the United States because foreign travelers are especially sensitive to price and will be attracted by the predetermined cost features of inclusive tours.[20] We also found that there was no reason to believe that the foreign market would not be vigorously promoted, since the carriers will have every incentive to develop such operations. We pointed out that the regulations governing

29597

inclusive tour charters will require the reporting of data which will enable us to assess the extent to which foreign travel is being promoted, and we called attention to the fact that if these data indicate that inbound travel is not being adequately promoted, the Board would be in a position to take necessary action, including the suspension of

[20] There is evidence in this proceeding to the same effect. See exhibits ASTA-10, ASTA-18, ASTA-27 and J-B.

inclusive tour authority pursuant to section 401(g) of the Act. In addition, we stressed the inequities involved in forcing the supplemental carriers to bear the brunt of a balance of payments policy while the route carriers remain free to promote and stimulate travel abroad. We believe the foregoing conclusions, as well as the underlying findings in the *Supplemental Air Service* case, are equally applicable here, and we adopt them as part of this opinion.[21]

In view of the foregoing, we find that no purpose would be served in reopening the record to take testimony on balance of payments, as suggested by the route carriers. In the last analysis, since the impact on gold flow would depend to a large extent on the promotional efforts of the carriers and the tour operators, additional evidence on the

29598

balance of payments issue cannot be conclusive. We believe the needed authorization should not be deferred for such a hearing, and that the over-all interest in the gold problem will be amply protected by the temporary nature of the authorizations, the reporting requirements which we are imposing, and our ability to take action prior to

[21] Order E-24237, March 11, 1966, pp. 5-9. It is true that the evidence in the instant proceeding indicates a greater volume of potential transatlantic inclusive tour traffic than is the case in the other foreign geographical areas involved in the *Supplemental Air Service Proceeding*. Thus, the estimate of one carrier suggests a transatlantic inclusive tour market in the initial year of operations of approximately 25,000 to 30,000 passengers. If all of these passengers were U. S. originated, the potential gold outflow would be in the neighborhood of 24 million dollars, based upon an adverse balance of $800 per traveler. See "The Impact on the Balance of Payments of the Air Transport and Aircraft Industries," note 19, *supra*, p. 33. It is clear, however, that a substantial portion of these passengers would originate in Europe.

the expiration of the temporary authorizations if need be. In the meantime, the experience which we will obtain during the experimental period will afford a more solid basis for assessing the impact on balance of payments than would be afforded by an evidentiary hearing at this point.

Terms and conditions. Part 378 of the Board's Special Regulations, issued in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding, supra,* grants indirect air carrier authority to tour operators and sets forth the regulatory provisions governing the conduct of inclusive tour charters by tour operators and supplemental air carriers. In adopting Part 378, we considered carefully the nature of the regulatory provisions which should govern the tour operations.[22] There has been no showing in the instant proceeding of any special problems in the transatlantic area which warrant different treatment from that afforded other geographic areas. Accordingly, we are concurrently herewith issuing an amendment to Part 378 making it appli-

29599

cable to transatlantic inclusive tour charters.[23]

---

[22] See Order E-23350, pp. 16-21. Part 378 was originally proposed in a rule making proceeding (SPDR-6, January 5, 1965), during the course of which the regulation was expanded to include transatlantic operations. (SPDR-6B, October 11, 1965). Comments with respect to the latter action were submitted, largely by the same parties involved herein, and have been considered by the Board.

[23] We are also amending, contemporaneously, Part 295 of the Board's Economic Regulations to bring inclusive tour charters within the definition of "charter flight."

The tour authority granted hereunder will terminate upon the termination of the transatlantic charter certificates of Capitol and Saturn. These certificates expire by their terms on April 18, 1969. With respect to any other carriers subsequently certificated in this proceeding to perform transatlantic operations, we will provide that their inclusive tour authority will terminate on the same date. We will thus be afforded a test period, following which we shall review the tour program to see if it has fulfilled its promise. In the meantime, the Board's rule making powers will enable it to modify the terms and conditions governing the tour operations if that is necessary in order to protect other segments of the air transportation industry.

Procedural questions. The route carriers argue that further hearings should be held if the Board is disposed to re-examine its earlier determination concerning inclusive tours. It is pointed out that the record was developed in 1962 based on 1961 and earlier data, and it is urged that the record has become stale. However, we find no sound basis for a reopening. Full and fair hearings have been held at which all parties were given an opportunity to develop the record on all relevant matters pertaining to this issue. Although the Board has on occasion found it necessary to reopen the record where evidence transpiring subsequent to the close of the record required exploration in an evidentiary hearing, the Board has never considered that a record should be reopened merely because it

is a few years old. The route carriers have not come forward with any showing that a reopened record would point

to a different conclusion from that adopted herein. Thus, there is no reason to believe that more recent evidence will show that the market for low-cost package tours is less than it was in 1961-62; that such tours would be relatively more diversionary of scheduled traffic; or that the route carriers are less capable now to cope with the competition from inclusive tours. On the contrary, the data of which we have taken official notice suggest rather that the more recent evidence reinforces our conclusions that grant of inclusive tour authority would be in the public interest.[24]

We have considered the remaining contentions of the parties[25] and find that, except to the extent indicated herein, they should not alter the results we have reached.

Accordingly, in view of the foregoing and upon consideration of the record, we find:

1. That the public convenience and necessity require

29601

that the transatlantic certificates of Capitol and Saturn be amended to provide for inclusive tour charter authority.

---

[24] In reaching our conclusions herein we have relied solely upon the record which was before us in 1963, supplemented by Form 41 reports and other data of which we may take official notice. We, therefore, do not reach the question as to whether we may lawfully rely upon materials from the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*

[25] These contentions include (1) the issue of our legal authority to authorize inclusive tours, which has been considered at length in our decision in the domestic phase of the *Supplemental Air Service Proceeding*, Order E-23350, March 11, 1966, pp. 4-13, as well as in the recommended decision of Examiner Park, and (2) the argument that the record must contain more evidence as to the details of the tours to be conducted by the tour operators, which was also disposed of by Examiner Park at pp. 49-51 of his decision.

(29601, 29602)

2. That the public convenience and necessity require that inclusive tour charter authority be awarded to any supplemental air carrier subsequently certificated in the *Reopened Transatlantic Charter Investigation,* Docket 11908, *et al.*, such authority to expire on April 18, 1969.

3. That the public interest requires the amendment of Part 295 of the Economic Regulations and Part 378 of the Special Regulations.

Appropriate orders will be entered.

MURPHY, Vice Chairman, and MINETTI, Member, concurred in the above opinion. GILLILLAND, Member, dissented, filing the attached statement. MURPHY, Chairman, and ADAMS, Member, did not take part in the decision.

29602

GILLILLAND, Member, Dissenting:

The inclusive tour aspects of this decision are subject to the frailties present in Order E-23350, March 11, 1966, and Order E-24237, March 11, 1966, and, as my stated reasons for dissent in those cases are applicable here, I incorporate them by reference.[1] I will supplement them briefly.

This decision cites section 417 of the Federal Aviation Act. Section 417 found its way into the Act as a part of Public Law 87-528, 87th Congress, July 10, 1962. The section indeed demonstrates the care exercised by the Congress in guarding the individual ticketing authority in air transportation, but which the Board here distributes gratis

[1] An example of regularly scheduled transportation authorized to tour operators under this decision is: New York-London-Paris-Rome.

by means of the tour operator device. The same is true of section 9 of Public Law 87-528.

Prior to the enactment of that law the supplemental carriers, previously defined only by the Board, performed certain limited individually ticketed services. Section 9 provided:

> The Civil Aeronautics Board may, if it finds such authorization to be in the public interest to permit an orderly transition to an all-charter operation, authorize the holder of any certificate or other operating authority issued by the Board under this Act or under section 401(d)(3) of the Federal Aviation Act of 1958 to perform individually ticketed and individually waybilled services in air transportation during the two-year period beginning on the date of enactment of this Act, subject to such terms, conditions, and limitations as the Board may prescribe. . . .

The Board's authority under this provision expired under its terms on July 10, 1964.

29603

Section 417 empowers the Board, in the event of temporary insufficiency of air transportation between points in the United States, or of temporary requirements between points at least one of which is not regularly served by any air carrier, and pursuant to investigation, notice and opportunity to protest, and findings, to grant to a supplemental carrier special authorization to engage in air transportation which shall be valid for not more than thirty days and may be extended for additional periods aggregating not more than sixty days. It is required that the special authorization:

> . . . shall contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist, without significant diversion of traffic from the holders of certificates for the route.

Section 417 remains in effect, but it includes all of the authority which the Board has in the matter.

I must observe also that the Board has not correctly read the *Transatlantic Charter Investigation*[2] decision which it here overrules on the ground that "it is clear beyond any reasonable doubt that the prime basis (low earnings of Pan American and TWA) upon which we rejected inclusive tour authority in our earlier decision has disappeared with the passage of time." This was not the "prime basis" for the decision and the carriers' earnings have by no means stabilized sufficiently to justify the unlimited exposure to which they will be subjected by this case. In fact over the 1958-65 period Pan American's rate of return was only 7.6

percent and 5.3 percent for TWA. Among the important reasons for the decision not now referred to by the Board was the lack of showing of need. The same lack is among the many inadequacies which are present here. There is not one shred of evidence that there is a public need for all-expense tour charters. In fact, the record shows that all-expense tours do not supplement scheduled route services but merely duplicate them at cutrate fares.

/s/ WHITNEY GILLILLAND

---

[2] Issued as Appendix A to Supplemental Opinion and Order E-20530 and E-20531, adopted February 24, 1964.

Order No. E-24240

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL EXPENSE TOUR PHASE)

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That amended certificates of public convenience and necessity for transatlantic supplemental air transportation in the forms attached hereto be issued to Capitol Airways, Inc., and Saturn Airways, Inc.

(29605, 29606)

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That inclusive tour charter authority be awarded to any supplemental air carrier hereafter certificated in the *Reopened Transatlantic Charter Investigation,* Docket 11908 *et al.,* such authority to terminate on April 18, 1969.

29606

4. That this order shall be effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON

September 27, 1966

29607

Order No. E-24240

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to en-

gage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event

the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the

United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24240), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24240.

(29609)

29609

Order No. E-24240

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

SATURN AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the

proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

(29610)

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24240), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24240.

29611

Order No. E-24241

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 11th day of March, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amendments to Parts 295 and 378 of the Board's Regulations, which are attached hereto and made a part hereof.[1]

2. That said amendments shall be effective on November 26, 1966.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

---

[1] For administrative convenience we have combined into a single amendment to Part 378 the revisions required by the decision in the instant proceeding as well as the decision in the foreign phase of the *Supplemental Air Service Proceeding*, Docket 13795 *et al.*

(29612)

Regulation No. ER-475

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Economic Regulations
Amendment No. 7 to Part 295
Effective: November 26, 1966
Adopted: March 11, 1966

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

REDEFINITION OF "CHARTER FLIGHT" TO INCLUDE INCLUSIVE TOUR CHARTERS

The Board has determined in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, *et al.*, to grant inclusive tour charter authority to Capitol Airways, Inc., Saturn Airways, Inc., and any supplemental air carrier subsequently certificated in the transatlantic market in that proceeding.[1] Such authority involves the charter of supplemental carrier aircraft to tour operators who in turn sell the inclusive tours to individual members of the general public.[2] It therefore becomes necessary

[1] Order E-24240.

[2] Part 378 of the Board's Special Regulations, which contains the regulatory provisions governing inclusive tour operations, is being amended concurrently herewith to cover transatlantic inclusive tours.

to contemporaneously expand the definition of "charter flight," as contained in Part 295 of the Economic Regulations, to include inclusive tour charters.[3] Inasmuch as the question of whether such charters should be authorized in

the transatlantic market has been fully litigated in Docket 11908, *et al.*, we believe that further notice and public procedure on this amendment are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 295 of its Economic Regulations effective November 26, 1966, as follows:

1. By amending §295.2(b) to read as follows:

§295.2 *Definitions.*

As used in this part, unless the context otherwise requires—

* * * * *

(b) "Charter flight" means air transportation performed by a direct air carrier on a time, mileage or trip basis where (1) the entire capacity of one or more aircraft has been engaged for the movement of persons and their personal baggage—

(i) By a person for his own use (including a direct air carrier when such aircraft is engaged solely for the trans-

[3] In view of the extensive application and reporting requirements imposed by Part 378, the operation of inclusive tour charters is being exempted from the condition that a "Statement of Supporting Information" be executed prior to any supplemental air transportation performed pursuant to Part 295.

portation of company personnel or commercial passenger traffic in cases of emergency);

(ii) By a representative (or representatives acting jointly) of a group for the use of such group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services); or

(iii) By a tour operator as defined by Part 378 of this chapter; or (2) one-half the capacity of an aircraft has been engaged by a person for his own use or by a representative or representatives of a group for the use of such group and the remaining half of the capacity of such air-

craft has been engaged by another person for his own use or by a representative or representatives of a second group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services).

With the consent of the charterer, the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

2. By revising §295.5(a) to read as follows:

§295.5 *Records and record retention.*

(a) Prior to performing any supplemental air transportation pursuant to this part, the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof: *Provided,* That this requirement shall not apply to inclusive tour charters.

(Section 204(a) of the Federal Aviation Act of 1958; 72 Stat. 743; 49 U. S. C. 1324. Interpret or apply sections 401 (d)(3), 401(n); 76 Stat. 143, 144; 49 U. S. C. 1371.)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 7 to Part 295 effective April 30,1964.

(29615)

29615

Regulation No. SPR-16

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Special Regulations
Amendment No. 2 to Part 378
Effective: November 26, 1966
Adopted: March 11, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN AIR TRANSPORTATION

Part 378 of the Board's Special Regulations (14 CFR Part 378), which contains the regulatory provisions governing the operation of inclusive tour charters, was originally issued[1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*[2] In order to correspond with the scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to inclusive tours in interstate air transportation.

To correspond with authorizations being awarded as a result of the Board's final decisions in the foreign and overseas phase of the *Supplemental* case[3] and in the *Re-*

[1] Regulation No. SPR-14, adopted March 11, 1966, and published in 31 F. R. 4779.

[2] Order E-23350.

[3] Order E-24237.

opened Transatlantic Charter Investigation (All-expense Tour Phase), Docket 11908, *et al.*,[4] which are being issued

29616

concurrently herewith, we are amending Part 378 to expand its coverage to inclusive tours in overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceedings, and because parties to the rule making were heretofore given the opportunity to comment on this matter,[5] further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 378 of its Special Regulations effective November 26, 1966, as follows:

1. By revising §378.1 to read as follows:

§378.1 *Applicability.*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate, overseas and foreign air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the

[4] Order E-24240.

[5] Part 378 as originally proposed pertained to interstate and *overseas* air transportation (Notice of Proposed Rule Making SPDR-6, January 5, 1965, 30 F. R. 281). Moreover, the proposed regulation was amended to cover *foreign* air transportation (Supplemental Notice of Proposed Rule Making, SPDR-6B, October 11, 1965, 30 F. R. 13077). Comments concerning both of these Notices were received, as set forth in SPR-14, *supra*, and have been considered by the Board.

(29616, 29617)

Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions of this regulation shall not be construed as

limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

2. By revising §378.2(a) to read as follows:

§378.2 *Definitions.*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours.

(Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended, (72 Stat. 737; 49 U. S. C. 1301; 72 Stat. 743; 49 U. S. C. 1324; 72 Stat. 754 as amended by Stat. 143; 49 U. S. C. 1371; 72 Stat. 768; 49 U. S. C. 1379; 72 Stat. 770; 49 U. S. C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U. S. C. 1371).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 2 to Part 378 effective May 13, 1966.

29618

Order No. E-24242

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Served: September 30, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

Decided: April 5, 1966

Certificates issued to American Flyers Airline Corp., Overseas National Airways, Trans International Airlines, and World Airways authorizing, for a period extending through April 18, 1969, supplemental air transportation of persons and their personal baggage between points in the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia as far east as (and including) India, on the other hand, subject to the terms, conditions, and limitations of Part 295 of the Economic Regulations and Part 378 of the Special Regulations.

APPEARANCES:

Same as in the Recommended Decision and, in addition, the following:

Leonard N. Bebchick for Saturn Airways.

(29619)

29619

OPINION

BY THE BOARD:

By Order E-21966, March 30, 1965, the Board reopened the *Transatlantic Charter Investigation,* Docket 11908 *et al.,* to determine whether the public convenience and necessity require the certification of one or more supplemental air carriers, in addition to Capitol and Saturn, to provide transatlantic passenger charter services.[1] American Flyers, Modern Air Transport, Overseas National Airways, Trans International Airlines, U. S. Overseas Airlines, World Airways, and Zantop Air Transport prosecuted applications for such authority.

In his recommended decision Examiner Ralph L. Wiser found that four supplemental air carriers, in addition to Capitol and Saturn, should be authorized to conduct transatlantic passenger charters; that American Flyers, ONA, TIA, and World should be selected to provide such service for a temporary period extending through April 18, 1969; and that the applications of Modern, USOA, and Zantop should be denied.

Exceptions to the examiner's decision and briefs to the Board have been filed,[2] and the Board has heard oral argument. Upon consideration of the record and the conten-

[1] Capitol and Saturn were issued temporary certificates authorizing transatlantic passenger charter services in Order E-20530, February 24, 1964.

[2] Capitol, Modern, ONA, Pan American, Saturn, TIA, Trans World, USOA, World, and Zantop filed exceptions and briefs. Briefs but no exceptions were filed by American Flyers and Bureau Counsel.

tions of the parties, we find that we are in agreement with the recommendations of the examiner. Accordingly, except

29620

as modified herein, we adopt as our own the findings, conclusions, and recommendations of the examiner in his decision which is attached hereto as an appendix. Since the examiner in his recommended decision dealt fully with the issues in the case, we will add only two comments.

1. Zantop contends that the examiner erred in finding that it is not fit, willing, and able to provide transatlantic charter air transportation. To the extent Zantop is arguing that it meets the statutory test of fitness, willingness, and ability set forth in section 401(d) of the Act as a prerequisite to issuance of a certificate, we think it clear that the carrier is fit, willing, and able.[3] However, the fundamental question in this case is much broader, and we are in full accord with the examiner's conclusion that four additional transatlantic charter carriers should be certificated and with his conclusion, based on a thorough comparative evaluation of the applicants, that American Flyers, ONA, TIA, and World should be selected.[4]

2. The Bureau and the intervenors have renewed their arguments that the certification of four additional supplemental carriers would unduly complicate the problem of foreign landing rights, would create difficulties in our avia-

[3] Since the examiner expressly found that Zantop is one of the strongest supplemental carriers, we do not believe that his decision, read as a whole, is to the contrary.

[4] What has been said applies equally to Modern.

tion negotiations with foreign governments, and would increase the demand for a grant of reciprocal charter authority to foreign air carriers. Similar arguments were

advanced in the *Supplemental Air Service Proceeding*, Docket 13795, were considered by the Board, and were rejected. For the reasons set forth by the Board in its decision in that case, the arguments here are similarly rejected.

We have considered the remaining contentions of the parties and their exceptions to the recommended decision and find that they should not alter the results we have reached.

Accordingly, in view of the foregoing and all the facts of record, we find:

1. That the public convenience and necessity require that certificates be issued to American Flyers, ONA, TIA, and World authorizing, for a period extending through April 18, 1969, supplemental air transportation (including inclusive tour charter authority)[5] of persons and their personal baggage between points in the 48 contiguous states of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand, subject to the terms, conditions, and limitations of the Board's

[5] In the inclusive tour phase of this proceeding (Order E-24240), the Board found that inclusive tour charter authority should be awarded to any supplemental air carrier certificated to perform transatlantic charters in this phase of the *Reopened Transatlantic Charter Investigation*.

Regulations governing transatlantic supplemental air transportation.

2. That American Flyers, ONA, TIA, and World are each citizens of the United States within the meaning of the Act, and are fit, willing, and able properly to perform the supplemental air transportation hereinabove authorized to be performed by each of them and to conform to the

provisions of the Act, and the rules, regulations, and requirements of the Board thereunder.

3. That the joint motion filed herein by TIA and World on February 1, 1966, should be denied.[6]

4. That, except to the extent otherwise indicated, all applications, motions, and requests involved in this proceeding should be denied.

An appropriate order will be entered.

MURPHY, Vice Chairman, and MINETTI, Member, concurred in the above opinion. GILLILLAND, Member, filed the attached concurrence and dissent. MURPHY, Chairman, and ADAMS, Member, did not take part in the decision.

---

[6] TIA and World filed a motion requesting the Board to strike those portions of ONA's brief referring to the number of firm contracts for transatlantic pro rata charters it stated it had for 1966 or, in the alternative, to reopen the record to receive in evidence three affidavits as rebuttal to ONA's assertions. Since our decision to authorize additional charter carriers in the transatlantic market is not predicated upon the number of confirmed pro rata transatlantic charter flights for 1966 alleged by any of the applicants, TIA's and World's motion will be denied.

GILLILLAND, Member, concurring and dissenting:

The Board has previously found that the public convenience and necessity require that Overseas National Airways be certificated for transatlantic charter services and I do not herein take issue with that finding.[1] The sole issue now before the Board concerning ONA is that of fitness and I agree that the carrier meets the statutory test.

I do not agree, however, that the public convenience and necessity require the services of three additional carriers in this market. There is no demonstrated public need for additional service, the grant of such authority will complicate relations with foreign governments, and it will contribute to an unfavorable United States balance of payments.

The Board has not made the finding of public convenience and necessity required by the Act. The standards of public need apply equally under sections 401(d)(1) and 401(d)(3). The Board's decision is primarily based on a traffic estimate that doubles existing traffic. From this it is concluded that the market will support several additional carriers. Heretofore the Board has not considered that a presumption favoring additional competition arises from traffic volume alone. Other factors such as cost of service, benefits to the public, effect upon carriers already serving the markets, and adequacy of existing service have also been weighed. Such factors have here either not been discussed or have been lightly treated.

---

[1] See dissent Order E-20530, October 8, 1963, (Appendix A).

For example, the Board finds that Capitol and Saturn will not be adversely affected in that all traffic will be newly generated. The fact of the matter is that 100 percent of the traffic of Capitol and Saturn will be exposed to diversion, although they are only marginal operators at the present time. The Board has not found the existing service to be inadequate, but merely that there is a lack of aggressive exploitation, and that jet capability is insufficient. A finding of inadequate service cannot be made in a market which is saturated with the competitive services of 19 certificated carriers providing charter services, group fares, and various low-cost excursion fares. Furthermore, the record shows that all the existing carriers, including Capitol and Saturn, are presently adding jet aircraft to the charter market.

There are several markets in which, over the past ten years, traffic has more than doubled. For example, this has occurred in the New York-Los Angeles and New York-San Francisco markets. It would be surprising indeed if, for no other reason, it were now to be found that the number of carriers in such markets should also be doubled. I can perceive no distinction in principle between such cases and this one.

The prime purpose of Congress in enacting Public Law 87-528 was to bring stability and balance to the supplemental carrier industry through the certification process. The Board stated in the *Transatlantic Charter Investigation* (Order E-20530, October 8, 1963) that "the number of applicants to be authorized herein should be sufficiently restricted so as to afford the carriers selected the greatest

(29625)

possible opportunity to conduct profitable operations consistent with the needs of the traveling public for transatlantic charter services." This finding should not now be reversed. Capitol, Saturn, and QNA should be given a reasonable opportunity to develop the transatlantic charter market.

/s/ WHITNEY GILLILLAND

29627

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 5th day of April, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC
CHARTER INVESTIGATION

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Overseas National Airways, Inc., Trans International Airlines, Inc., and World Airways, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal

(29627, 29628)

of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That the joint motion of Trans International Airlines and World Airways filed herein on February 1, 1966, be and it hereby is denied.

4. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied.

29628

5. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON

September 27, 1966

29629

Issued pursuant to
Order No. E-24242

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

(29629, 29630)

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed

29630

transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of April 5, 1966 (Order E-24242), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 5th day of April, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24242.

(29631)

29631

Issued pursuant to
Order No. E-24242

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

OVERSEAS NATIONAL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words

(29631, 29632)

"supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board

29632

finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the

(29632)

United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of April 5, 1966 (Order E-24242), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 5th day of April, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24242.

29633

Issued pursuant to
Order No. E-24242

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

TRANS INTERNATIONAL AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words

(29633, 29634)

"supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board

29634

finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the

United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of April 5, 1966 (Order E-24242), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 5th day of April, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24242.

(29635)

29635

Issued pursuant to
Order No. E-24242

UNITED STATES OF AMERICA.

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

WORLD AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words

"supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board

finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the

(29636)

United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of April 5, 1966 (Order E-24242), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 5th day of April, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24242.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 510-11—September Term, 1966.

(Argued June 15, 1967 Decided July 20, 1967.)

Docket Nos. 30947-30948

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,

Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent,

WORLD AIRWAYS, INC., *et al.*,

Intervenors.

Before:

HAYS and FEINBERG, *Circuit Judges,*
and MCLEAN, *District Judge.**

Petition to review orders of the Civil Aeronautics Board awarding certain supplemental air carriers certificates which authorize them, *inter alia,* to operate so-called "inclusive tours" between points in the United States and various foreign points.

Orders set aside to the extent that they authorize "inclusive tours." Case remanded for further proceedings not inconsistent with this opinion.

* Of the Southern District of New York, sitting by designation.

EDWARD R. NEAHER, New York, New York (Carl S. Rowe, Gertrude S. Rosenthal and Chadbourne, Parke, Whiteside & Wolff, on the brief), *for Petitioners.*

WARREN L. SHARFMAN, Associate General Counsel, Litigation and Legislation, Civil Aeronautics Board (Donald F. Turner, Assistant Attorney General, Joseph B. Goldman, General Counsel, Civil Aeronautics Board, O. D. Ozment, Deputy General Counsel, Civil Aeronautics Board, Robert L. Toomey, Attorney, Civil Aeronautics Board and Howard E. Shapiro, Attorney, Department of Justice, on the brief), *for Respondent.*

CHARLES A. HOBBS, Washington, D. C. (Glen A. Wilkinson, Paul S. Quinn and Wilkinson, Cragun & Barker, on the brief), *for Intervenor American Society of Travel Agents, Inc.*

CLAYTON L. BURWELL, Washington, D. C., Counsel for Trans International Airlines, Inc., and RAYMOND J. RASENBERGER, Washington, D. C., Counsel for Purdue Aeronautics Corp., and World Airways Inc. (Stephen D. Potts, Washington, D. C., Counsel for American Flyers Airlines, Inc., George Berkowitz, New York, New York, Counsel for Capitol Airways, Inc., and Leonard N. Bebchick, Washington, D. C., Counsel for Saturn Airways, Inc., on the brief), *for the Intervenor Supplemental Air Carriers.*

HAYS, *Circuit Judge*:

This is a petition to review five orders of the Civil Aeronautics Board awarding certain supplemental air carriers, intervenors in this action, certificates which authorize them to operate so-called "inclusive tours"[1] between points in the United States and various foreign points. Petitioners' principal contention is that the Board lacked the power to authorize inclusive tours. The jurisdiction of this court is invoked under Section 1006 of the Federal Aviation Act of 1958, 49 U. S. C. §1486. We hold that the Board lacked the power to authorize "inclusive tours" and that the challenged provisions should be stricken from the certificates awarded to the intervening carriers.

I.

Petitioners are three air carriers holding certificates of public convenience and necessity issued by the Civil Aeronautics Board under Section 401(d)(1) of the Federal Aviation Act, 49 U. S. C. §1371(d)(1), authorizing them to engage in air transportation between the United States and various points abroad. Each of the intervenors, with the exception of the American Society of Travel Agents, Inc., is a supplemental air carrier[2] defined under Section 101(32)

1 The term "inclusive tour" is, generally speaking, synonymous with the more familiar "all expense" or "package" tour. Such a tour includes various land arrangements, for example, hotel accommodations, meals and sightseeing, as well as air transportation. "Inclusive tour charters" are arrangements by which the air carrier charters a plane to a "tour operator" or travel agent who sells the entire package to the public for a single price per person. In this opinion we adopt this terminology which was used by the Board although not by the hearing examiner.

2 At earlier stages of their development these carriers were known variously as "non-scheduled" or "large irregular" air carriers. Their history has been marked by frequent controversy and litigation. See, e.g., *Great Lakes Airlines, Inc.* v. *Civil Aeronautics Board*, 294 F. 2d 217, 221, n. 6 and cases there cited (D. C. Cir.), *cert. denied*, 366 U. S. 965 (1961).

of the Act, 49 U. S. C. §1301(32), as "an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation." As the name implies, the services of supplemental air carriers are intended to supplement those of the scheduled carriers. See Section 101(33) of the Act, 49 U. S. C. §1301(33).

In July 1962, Congress enacted Public Law 87-528, 76 Stat. 143, amending the Federal Aviation Act of 1958. The amendment established a comprehensive system for the certification and regulation of supplemental air carriers. In particular, it empowered the Civil Aeronautics Board to grant certificates of public convenience and necessity authorizing these carriers to engage in "supplemental air transportation." Section 401(d)(3), 49 U. S. C. §1371(d)(3).[3] "Supplemental air transportation" was defined as "charter trips in air transportation . . . to supplement the scheduled service" which regular route carriers such as petitioners are authorized to provide. Section 101(33), 49 U. S. C. §1301(33).

On March 11, 1966 the Board handed down opinions and orders in proceedings known as the *Supplemental Air Ser-*

---

3 §1371. *Certificate of public convenience and necessity*

(d) *Issuance*

* * * * *

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this chapter.

vice Proceeding and the *Reopened Transatlantic Charter Investigation.*

One of the orders, issued in the *Supplemental Air Service Proceeding,* Docket No. 13795, approved the certification of certain supplemental air carriers in the domestic area and authorized them to operate inclusive tour charters. CAB Order No. E-23350 (March 11, 1966). Other orders issued under the same name and docket number, (1) approved the certification of certain supplemental carriers to operate in various overseas and foreign areas[4] and authorized them to operate inclusive tours (CAB Order No. E-24237 (March 11, 1966)), and (2) adopted proposed regulations defining various terms and setting out the scope of the carriers' inclusive tour authorization (CAB Order No. E-24238 (March 11, 1966)).

Two other orders were issued the same day under the title *Reopened Transatlantic Charter Investigation* (All-Expense Tour Phase), Docket No. 11908. Under the first of these orders, the right to operate inclusive tours was

---

4 Section 101(21) of the Act, 49 U. S. C. §1301(21) provides:

"Interstate air transportation," "overseas air transportation," and "foreign air transportation," respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

added to the certificates previously granted to Capitol Airways and Saturn Airways authorizing them to engage in supplemental air transportation in the transatlantic area. CAB Order No. E-24240 (March 11, 1966). The second order adopted for the authorized transatlantic supplemental carriers the regulations referred to above. CAB Order No. E-24241 (March 11, 1966).

Under the statute the orders concerned with foreign air transportation entered in the *Reopened Transatlantic* and *Supplemental Air Service* cases were subject to the President's approval. See Section 801 of the Act, 49 U. S. C. §1461.[5] Those are the orders now before us for review. No presidential approval was required for the domestic orders entered in the *Supplemental Air Service Proceeding*. They immediately became final and subject to judicial review. The petitioners in the instant case were among the parties who sought judicial review of the Board's domestic orders in the Court of Appeals for the District of Columbia Circuit, contending primarily that the Board exceeded its statutory powers in granting supplemental carriers inclusive tour authority. That court had previously decided the "split charter"[6] case, *American Airlines, Inc.* v. *Civil Aero-*

---

5 §1461. *The President of the United States*

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

6 A split charter "is simply the process of chartering one half of an aircraft to each of two unrelated charter groups." *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349, 354 (D. C. Cir. 1965).

nautics Board, 348 F. 2d 349 (D. C. Cir. 1965), in which it had said:

> "Congress intended, although not without limits, that the Board should be free to evolve a definition [of 'charter trips,' 49 U. S. C. §§1301(33)] in relation to such variable factors as changing needs and changing aircraft . . . ." 348 F. 2d at 354.

Relying in part on the quoted statement and in part on its own analysis of the relevant legislative history, the court rejected the contention that Congress had not empowered the Board to authorize inclusive tours. *American Airlines* v. *Civil Aeronautics Board,* 365 F. 2d 939 (D. C. Cir. 1966).

Thereafter, on September 27, 1966, the orders concerning foreign air transportation were approved by the President. Petitioners now seek review of the orders in this court contending that the Board exceeded its statutory powers in granting inclusive tour authority to supplemental air carriers. They also urge that the Board erred in denying them a hearing before it granted inclusive tour authority to the supplemental carriers involved in the *Reopened Transatlantic Charter Investigation* and that the orders are unlawful under the statute since they were approved by only two members of the five man Board, one member dissenting and two not participating.

In view of our decision that the grant of authority for inclusive tours was beyond the Board's power, we find it unnecessary to reach the other points raised by petitioners.

The Board contests petitioners' claims on the merits. It also argues that its power with respect to the orders in question was conclusively determined in the prior action involving these petitioners, *American Airlines* v. *Civil Aeronautics Board, supra,* 365 F. 2d 939, and that the doctrine of *res judicata* precludes relitigation of this issue.

II.

The Board has moved that the appeal be dismissed or transferred to the Court of Appeals for the District of Columbia Circuit. It is conceded that our court has jurisdiction of the petition and that venue is proper under Section 1006 of the Act, 49 U. S. C. §1486. However, the Board argues that petitioners are guilty of forum-shopping, seeking a determination from this court contrary to that reached by the District of Columbia Circuit, thus enhancing their opportunity for review in the Supreme Court of the legal issues here tendered. We are urged to transfer the appeal, either under the provisions of 28 U. S. C. §2112,[7] or in the exercise of our inherent discretionary power.

Section 2112 authorizes transfer only where "proceedings have been instituted in two or more courts of appeals with respect to the same order." It is clear that the orders before us are not the same as those reviewed by the Court of Appeals for the District of Columbia Circuit. See *Far East Conference* v. *Federal Maritime Comm'n*, 337 F. 2d

---

7 §2112. Record on review and enforcement of agency orders.

(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifically prescribe such time or manner of filing or contents of the record . . . . If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

146, 148 n. 1 (D. C. Cir. 1964), cert. denied, 379 U. S. 991 (1965).

Even assuming that this court has inherent discretionary power to transfer a case to another court of appeals in the interests of orderly judicial administration (but see *Gulf Oil Corp.* v. *Federal Power Comm'n*, 330 F. 2d 824 (5th Cir. 1964)), we find nothing in the decided cases that would justify us in transferring this case to the District of Columbia Circuit. We have jurisdiction of the action and, since petitioners' principal place of business is in the Second Circuit, venue is properly laid. Cf. *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 343 F. 2d 905 (8th Cir. 1965); *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 337 F. 2d 249 (10th Cir. 1964). Reaching the merits in this case will not require us to construe a prior order of another circuit (cf. *Pacific Gas & Electric Co.* v. *Federal Power Comm'n*, 272 F. 2d 510 (D. C. Cir. 1958) (accepting transfer from 9th Circuit)) and we are not presented with the very unusual circumstances thought by the court to justify transfer in *Eastern Air Lines* v. *Civil Aeronautics Board*, 354 F. 2d 507 (D. C. Cir. 1965).

In the absence of any showing of inconvenience to respondent, we are not convinced that there are any interests of sound judicial administration which suggest that this case should be transferred. We can perceive no reason for treating this case as an exception to the principle affording a litigant wide latitude in his selection of a forum where Congress has given him a choice.

III.

The Board's motion to dismiss is based on its contention that the doctrine of *Chicago & S. Air Lines* v. *Waterman S. S. Co.*, 333 U. S. 103 (1948), precludes review of the Board's challenged orders and that, in any event, prin-

ciples of *res judicata* prevent petitioners from relitigating the issues. We hold that neither the *Waterman* doctrine nor principles of *res judicata* bar us from deciding the merits of petitioners' claim.

In the *Waterman* case petitioner sought to invalidate a Board order awarding route authority for overseas and foreign air transportation. In accordance with Section 801 of the statute, 49 U. S. C. §1461 (reprinted in footnote 5 *supra*), the order had been submitted to the President and had been approved by him. Petitioner did not challenge the regularity of the Board's proceedings and apparently raised no issue as to the Board's statutory authority; instead it attacked the correctness of the Board's findings and the adequacy of the evidence supporting them. The Supreme Court held that:

> "[O]rders of the Board as to certificates for overseas or foreign air transportation are not mature and are therefore not susceptible of judicial review at any time before they are finalized by Presidential approval. After such approval has been given, the final orders embody Presidential discretion as to political matters beyond the competence of the courts to adjudicate." 333 U. S. at 114.

We need not decide whether, as has been argued, the *Waterman* decision rests on a misinterpretation of Section 1006 of the Act, 49 U. S. C. §1486 providing for judicial review of the Board's orders. See Miller, the *Waterman* Doctrine Revisited, 54 Geo. L. J. 5, 6-9 (1965). We agree with the Court of Appeals for the District of Columbia Circuit that the *Waterman* case does not "govern a situation where the action of the Board, before the matter reaches the President, is beyond the Board's power to act."

American Airlines v. *Civil Aeronautics Board, supra,* 348 F. 2d at 352. As the court there stated:

> "Clearly, *Waterman* presupposes lawfully exercised congressional authority in the Board's action, in the first instance, as an indispensable predicate, without which there is nothing Presidential action can approve." *Ibid.; cf. id.* at 354-55 (concurring opinion); see generally, Miller, *op. cit. supra.*

Waterman, therefore, presents no obstacle to the attack on the Board's orders in this case.

We also reject the Board's contention that the doctrine of *res judicata* bars further litigation of the issues now before us.

The principles to be applied were summarized by the Supreme Court in *Commissioner* v. *Sunnen,* 333 U. S. 591 (1948):

> "[I]f the very same facts and no others are involved in the second case . . . the prior judgment will be conclusive as to the same legal issues which appear, assuming no intervening doctrinal change. But if the relevant facts in the two cases are separable, even though they be similar or identical, collateral estoppel does not govern the legal issues which recur in the second case." 333 U. S. at 601 (footnote omitted); see *Consolidated Edison Co.* v. *United States,* 279 F. 2d 152, 154 (2d Cir. 1960), aff'd 366 U. S. 380 (1961); cf. *Federal Power Comm'n* v. *Amerada Petroleum Corp.,* 379 U. S. 687, 690 (1965); *United States* v. *Stone & Downer Co.,* 274 U. S. 225 (1927); *Grandview Dairy* v. *Jones,* 157 F. 2d 5, 9, 10 (2d Cir.), cert. denied, 329 U. S. 787 (1946); see generally Developments in the Law—*Res Judicata,* 65 Harv. L. Rev. 818, 843-44 (1952).

More recently, in *Yates* v. *United States*, 354 U. S. 298 (1957), the Court said that the

> "doctrine makes conclusive in subsequent proceedings only determinations of fact, and mixed fact and law, that were essential to the decision. *Commissioner* v. *Sunnen*, 333 U. S. 591, 601-602; *Tait* v. *Western Maryland R. Co.*, 289 U. S. 620 [1933]; *The Evergreens* v. *Nunan*, 141 F. 2d 927, 928 [(2d Cir.), cert. denied, 323 U. S. 720 (1944)]." 354 U. S. at 336; See Restatement, Judgments §70, comment e.

The operative facts in this case, involving overseas and international air transportation, are different from those before the District of Columbia Circuit in the domestic charter case. Separate exhibits relating to each area were admitted in the proceedings before the Board. In their opinions the Board and examiner considered each area separately, noting, for example, the different amounts of charter traffic involved and the different consequences, in terms of potential diversion of passengers from the regularly scheduled carriers, that inclusive tours would have in each market. The orders here challenged became final at a different time and are clearly distinguishable from those involved in the domestic charter litigation.

None of the cases cited by the Board supports the conclusion that principles of *res judicata* preclude litigation of the question of law here involved. For example, the "order" challenged in *Cities Service Co.* v. *Securities and Exchange Comm'n*, 257 F. 2d 926 (3d Cir. 1958) was merely a phase of the order which had been previously upheld by this court in *Cities Service Co.* v. *Securities and Exchange Comm'n*, 247 F. 2d 646 (2d Cir. 1957), cert. denied, 355 U. S. 912 (1958). Petitioner was thus properly precluded from relitigating the issue. *Bartsch* v. *Wash-*

ington Metropolitan Area Transit Comm'n, 357 F. 2d 923 (4th Cir. 1966) is distinguishable on similar grounds.

This court has said that "the law of collateral estoppel is 'growing law.'" *United States* v. *Russell Mfg. Co.,* 349 F. 2d 13, 18-19 (2d Cir. 1965); see also *B. R. DeWitt, Inc.* v. *Hall,* 19 N. Y. 2d 141, 278 N. Y. S. 2d 596 (1967). Nevertheless judicial aversion to forum shopping is not a sufficient ground for precluding litigation of a question of law by extending the doctrine of *res judicata* into areas traditionally governed by "the ordinary rule of stare decisis." *Commissioner* v. *Sunnen, supra,* 333 U. S. at 601; cf. *Island Airlines, Inc.* v. *Civil Aeronautics Board,* 363 F. 2d 120, 123 (9th Cir. 1966). We therefore consider ourselves free "to make an independent examination of the legal matters at issue." *Commissioner* v. *Sunnen, supra,* 333 U. S. at 601.

IV.

The question before us is whether the Board's statutory authority to issue certificates of public convenience and necessity for "supplemental air transportation," defined as "charter trips in air transportation," (Section 101(33) of the Act, 49 U. S. C. §1301(33)) includes the power to authorize inclusive tour charters.[8] Consideration of the legislative history of the Act leads us to the conclusion that the term "charter trips" was not intended to embrace the inclusive tour charters authorized by the Board's orders.

The provisions in question were added to the Federal Aviation Act by Public Law 87-528. As we have pointed

8 The question presented is not whether Congress withdrew from the Board a pre-existing power to grant inclusive tour authority. "[P]rior to 1962 the Board had never authorized inclusive tour authority for the supplementals." *American Airlines* v. *Civil Aeronautics Board, supra,* 365 F. 2d at 946. See also Hearings Before the Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st Sess. 111 (1961).

out this amendatory legislation established a comprehensive system for the certification and regulation of supplemental air carriers. Its principal purposes were to clarify the permissible field of operations of the supplemental carriers,[9] to assure their economic viability, to eliminate marginal and unsafe operators and "to maintain the regulatory scheme of the Federal Aviation Act and the protection of the certificated carriers such as petitioners by eliminating unregulated individually ticketed point-to-point competition from the supplementals." *American Airlines, Inc.* v. *Civil Aeronautics Board, supra,* 365 F. 2d at 944-45; see authorities cited *id.*, at n. 8.

The bill which evolved into Public Law 87-528 was prepared by the Board and introduced in both houses of Congress early in the 87th Congress. See S. 1969, 87th Cong., 1st Sess. (1961); H. R. 7318, 87th Cong., 1st Sess. (1961). Also introduced in the House was a bill proposed by the supplemental air carriers, H. R. 7512, 87th Cong., 1st Sess. (1961).

The definition of "supplemental air transportation" found in the Board's bill[10] would have permitted the Board

---

9 The statute was in part a response to the decisions in *United Air Lines* v. *Civil Aeronautics Board,* 278 F. 2d 446 (D. C. Cir.), vacated, 364 U. S. 297 (1960) and *American Airlines* v. *Civil Aeronautics Board,* 235 F. 2d 845 (D. C. Cir. 1956), cert. denied, 353 U. S. 905 (1957), which the Board thought had placed in doubt the statutory basis for the continued operation of supplemental carriers under existing law. See Hearings Before the Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st Sess. 5, 281-83 (1961); Hearings Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 87th Cong., 1st Sess. 10, 13, 29 (1961).

10 The Board's bill provided:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity

to certify supplemental air carriers to perform a broad range of services including not only existing charter services but also the limited individually ticketed transportation for the general public that was then permitted under temporary legislation passed by Congress. See Public Law 86-661, 74 Stat. 527 (1960); H. R. 7318, Section 2, 87th Cong., 1st Sess. (1961); see also Public Law 87-528, Section 7, reprinted after 49 USC §1371. The definition contained in the bill proposed by the supplemental carriers went even further. It would have authorized "unlimited charter operations on a planeload basis for the carriage of passengers and property . . . with the word 'charter' herein being defined as air transportation performed pursuant to an agreement for the use of the entire capacity of an aircraft . . . ." H. R. 7512, 87th Cong., 1st Sess. (1961). It also would have permitted "individually ticketed passenger . . . operations . . . in interstate, overseas and territorial air transportation." *Ibid.*

Hearings at which representatives of the Board, the scheduled aircarriers and the supplementals all testified were held in June, 1961, before the Aviation Subcommittee of the Senate Committee on Commerce and before a Subcommittee of the House Committee on Interstate and Foreign Commerce. At the hearings the Board made clear its opposition to any arrangement that would permit travel agents to solicit the general public in forming charter groups. See, e.g., Senate Hearings, *supra* n. 9, at 29.

Following the hearings each committee reported out its own bill. Under the Senate Bill the Board was expressly

---

which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

empowered to authorize supplemental carriers to operate inclusive tours.[11] With the express exception of the "all expense-paid tour," the Senate bill was intended to prevent the Board from authorizing "individually ticketed service whether offered by an air carrier directly or by a travel agent." S. Rep. No. 688, 87th Cong., 1st Sess. 13-14 (1961). However it did not, as the Board contends, require that supplementals be certificated to operate inclusive tours. Its language was merely permissive, authorizing the Board to grant such authority when required by the public need and consistent with the capability and interests of the particular carrier. "[T]he bill does not require the Board to grant every supplemental carrier any particular charter authority." See S. Rep. No. 688, 87th Cong., 1st Sess. 12-13 (1961).

The bill passed the Senate on August 28, 1961.

The bill reported out by the House Committee, like the Senate bill, worked substantial changes in the legislation drafted by the Board. However, unlike the Senate bill, the House version did not define the term charter although that term is found in the bill's definition of supplemental air transportation.[12] The definition of "supplemental air

---

11 The bill defined "charter service" to mean:

"air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour."

12 "(33) 'Supplemental air transportation' means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity

transportation" included in the House bill was ultimately enacted by Congress as part of Public Law 87-528. See 49 U. S. C. §1301(33).

Of particular importance in deciding what was the intended scope of the Board's powers under this bill which was passed by the House on September 18, 1961, is the statement of the House Committee that its bill "would give the Board some, but not all, of the authority requested by it. The committee substitute would establish guidelines for the Board to follow in exercising its authority to certificate supplemental carriers, especially, in the field of individually ticketed operations." H. R. Rep. No. 1177, 87th Cong., 1st Sess. 6-7 (1961).

In deciding whether grant of inclusive tour authority violates the limitations of the statute it must be remembered "that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel." *American Airlines* v. *Civil Aeronautics Board, supra,* 348 F. 2d at 354. See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 14 (1967).

It is clear that the fact that the Board has the power to define "charter" to include split charters (see *American Airlines* v. *Civil Aerondutics Board, supra,* 348 F. 2d 349), a device permitting the Masons and Elks each to charter one half of the capacity of an aircraft, does not mean that the Board is free to adopt a definition that contravenes basic policies laid down in the Act. To permit the selling of individual tickets to the general public in direct competition with the regularly scheduled airlines, regardless of whether such selling is done through the medium of a

---

issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

travel agent who has first "chartered" the plane, does violate basic policies of the Act. Any lingering ambiguities clouding this issue are dispelled by the subsequent history of the House and Senate bills, to which we now turn.

The conflicting House and Senate bills were submitted to a Conference Committee which reported out a substitute bill that was ultimately enacted as Public Law 87-528. The substitute followed the House version, eliminating the definition of the term "charter" found in the Senate bill. It is clear from the conference report that one purpose of the Committee in adopting the provisions of the House bill was to prohibit "individually ticketed and waybilled services on a permanent basis."[13] See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 14 (1962).

Even more direct and more persuasive evidence is available concerning the intention of the conferees in striking from the bill the provision that would have permitted all expense package tours. Several of the bill's floor managers addressed themselves to this subject during the debate on

---

13 The statute as enacted permits only two exceptions to the general rule forbidding supplemental carriers to provide individually ticketed services. The first exception, Section 9 of Public Law 87-528 provided a two year period, now expired, during which the Board could authorize such services in order "to permit an orderly transition to an all-charter operation." Reprinted following 49 U. S. C. §1371; See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 7, 14 (1962). The second authorizes the Board to issue a "special operating authorization" for a period of 30 days subject to renewal for a maximum of 60 additional days. Such authorization, enabling a supplemental carrier to engage in individually ticketed operations, could be issued only on a showing that "the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service," or that there is a temporary requirement for such service between two points not regularly served by a scheduled carrier. Section 417 of the Act, 49 U. S. C. §1387; see Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 4 (1962); H. R. Rep. No. 1177, 87th Cong., 1st Sess. 2, 12-13 (1961).

the bill in their respective houses. They were unanimous in declaring that the "all-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in [the House's] position on that." 108 Cong. Rec. 12322 (June 29, 1962) (remarks of Rep. Williams); see remarks of Rep. Walter, *ibid.* Their statements as to this limitation on the Board's authority went unchallenged.

For example, Senator Scott stated:

> "The Senate bill proposed to modify the established concept of charter by permitting charters to 'a group on an all-expense-paid tour.' Such a group could have been assembled from the general public . . . .
>
> The committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms the established law as to a charter in air transportation. There should be no question about that. The Congress has considered, and has rejected, a proposal to change the established meaning of charter so as to have permitted travel agent charters for all-expense tours. Such charters have no place in air transportation." 108 Cong. Rec. 12284-85 (June 29, 1962).

Senator Thurmond stated:

> "I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. This would be intolerable, and has been expressly rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision." 108 Cong. Rec. 12285 (June 29, 1962).

In the House, Representative Harris, Chairman of the House Interstate Commerce Committee, made clear that

while "the Senate proposed to change the well established meaning of 'charter,'" the House objected to the change.

> "A charter in the aviation field has always meant the engagement of the entire capacity of the aircraft for a particular purpose by a single engaging party. Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the 'all-expense tour' language. As explained in the House report, we felt the Board should be in a position to deal effectively with any efforts to abuse the meaning of charter." 108 Cong. Rec. 12322 (June 29, 1962).

He went on to read a statement, identical to one submitted later by Representative Collier:

> "The bill, as reported by the conference committee, contains no definition of charter. The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such

subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus the bill, as passed by the House, contained no definition of charter.

The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter of 'a group on an all-expense paid tour.' The Senate conferees having receded from insistence on the all-expense-paid tour exception, it followed that the remainder of the Senate definition was superfluous since it merely stated established law and policy." 108 Cong. Rec. 12322 (June 29, 1962); see *id.* at 12324 (remarks of Rep. Collier).

Senator Cotton said:

"The conferees agreed to drop the language in the Senate bill which defined charter service, and permitted the sale of tickets on charter flights to individual members of the general public who were on all-expense-paid tours. I am wholly in accord with the action in eliminating the all-expense tour provision and thus refusing to confer this power on the Board." 108 Cong. Rec. 12284 (June 29, 1962).

These statements are specific in rejecting the notion that the term charter can be construed to include all expense tours. We therefore reject the argument that the legislators' concern was with abuses growing out of the Board's

prior practice of allowing supplemental carriers to perform limited scheduled individually ticketed travel. Regardless of the extent to which there may have been legislative concern based on this prior experience, indeed whether or not the expression of concern was misguided or wholly unwarranted, it was in fact manifested in a congressional declaration binding on both the Board and this court, that was clearly intended to forbid the Board to authorize inclusive tours.

The Board also argues that many of the statements made on the floor of Congress were directed against split charters as well and that the Board's power to authorize such charters has nevertheless been upheld. See *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d 349. While we have no occasion to pass on the question of the propriety of split charters we note that Congressional concern with their potential impact is much less clear from the Committee reports and hearings than is the intention to prohibit individually ticketed operations in whatever guise, by supplemental carriers. Moreover, the legislative history involved in the inclusive tour question, with one house passing legislation that would have specifically empowered the Board to authorize package tours only to have the provision deleted by the Conference Committee with the floor managers unanimous in their explanations of the change, is not repeated in the case of split charters. See, e.g., 108 Cong. Rec. 12283 (June 29, 1962) (remarks of Sen. Monroney). On the contrary, the provision deleted from the Senate bill would in fact have forbidden split charters. See Section 101(13) of the bill, S. Rep. No. 688, 87th Cong., 1st Sess. 13, 22 (1961) (reprinted n. 11 *supra*).

But the Board urges that in construing the statute we should not give any weight to statements made in floor

debate. In determining whether it had the power to authorize inclusive tours, the Board, finding the statute and committee reports clear, declared that there was "no sound reason for attempting to analyze the statements made at the time of the passage of the bill by certain of its floor managers." Board Order E-23350 (March 11, 1966).

We do not agree. That Congress adopted the House version of the bill, specifically rejecting the Senate's conflicting version, is of course an extremely significant factor in determing what was Congress' intention with respect to the matters in issue. See, e.g., *First Nat'l Bank* v. *Walker Bank*, 385 U. S. 252, 258 (1966). It would be foolish, indeed, to disregard the one source of legislative history that explains the reasons for the conference committee's action.

Nor are we here concerned with general remarks made in debate which contradict either the face of the statute or statements in committee reports. On the contrary, we have before us on the one hand a statute that is not clear on its face and committee reports that seem to support petitioners' view although they can perhaps be deemed ambiguous. On the other hand we have statements made by the floor managers that fully explain the changes in the bill. These floor managers were members of the legislative committees that held extensive hearings and were responsible for formulating the legislation.[14]

Only recently, in circumstances similar to those in the instant case, a unanimous Supreme Court relied on statements made in debate, not only by a sponsor of legislation and by a member of the Conference Committee but also by

14 For example, Representative Harris was the Chairman of the House Committe on Interstate and Foreign Commerce, Representative Williams was Chairman of the Subcommittee on Transportation and Aeronautics of which Representative Collier was a member, Senator Monroney was chairman of the Subcommittee on Aviation, Senators Thurmond, Cotton, Morton and Scott were on that committee.

other members of Congress, and regarded such statements as authoritative indicators of congressional intent. *First Nat'l Bank* v. *Walker Bank, supra,* 385 U. S. at 258-60; see also *Brown Shoe Co.* v. *United States,* 370 U. S. 294, 311-23 (1962).

The authorities cited by the Board do not support the view that we may disregard or give little or no weight to statements made on the floor of Congress under the circumstances of this case. In *United States* v. *International United Automobile Workers (UAW-CIO),* 352 U. S. 567 (1957) although the Court did say that debate is not entitled to the same weight "as carefully considered committee reports," it still examined the debate, finding that it confirmed what was contained in the reports. 352 U. S. at 586-87 & n. 1. *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443, 474-75 (1921) exhibits a similar treatment of Congressional debate. *Nicholas* v. *Denver & Rio Grande W. R. R.,* 195 F. 2d 428, 431-32 (10th Cir. 1952), whatever dictum the opinion may contain to the contrary, fully supports the position that we take here.

If, as we hold, Congress did not give the Board power to authorize inclusive tours it is immaterial whether, as the Board contends, the proposed regulations will be effective in curbing abuses of the inclusive tour certificates.

Since the Motor Carrier Act is quite different from the Federal Aviation Act in language, statutory structure and legislative history, the fact that all expense tours have been approved under the Motor Carrier Act (see *National Bus Traffic Ass'n* v. *United States,* 143 F. Supp. 689 (D. N. J. 1956), aff'd *per curiam,* 352 U. S. 1020 (1957)), is not at all persuasive in construing Public Law 87-528, even if we assume that the tours there authorized are similar to those approved by the Board in this case, an assumption that petitioners vigorously contest.

We hold that the certificates before us awarding inclusive tour authority to supplemental air carriers in foreign and overseas transportation are invalid.

Since our conclusion that the Board acted in excess of its statutory powers is dispositive of the case, we need not pass on the other points raised by petitioners.

The orders are set aside and the case remanded to the Board for further proceedings not inconsistent with this opinion.

Judgment

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentieth day of July, one thousand nine hundred and sixty-seven.

Present:

HON. PAUL R. HAYS,
HON. WILFRED FEINBERG,
Circuit Judges,

HON. EDWARD C. McLEAN,
District Judge.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,

Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., WORLD AIRWAYS, INC., SATURN AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., PURDUE AERONAUTICS CORP. (Purdue), AMERICAN FLYERS AIRLINE CORP.,

Intervenors.

Judgment

A petition for review of orders of the Civil Aeronautics Board together with a motion by the respondent to dismiss the petition for lack of jurisdiction or in the alternative to transfer the action to the United States Court of Appeals for the District of Columbia.

This cause came on to be heard on a transcript of record certified by the Civil Aeronautics Board and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that said orders be and they hereby are set aside and that the action be and it hereby is remanded for further proceedings not inconsistent with the opinion of this court, with costs to the petitioners.

Further ordered, adjudged and decreed that said motion be and it hereby is denied.

A. DANIEL FUSARO
Clerk

A true copy.

A. DANIEL FUSARO
Clerk

(Seal)

Order on Rehearing

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth day of September, one thousand nine hundred and sixty-seven.

Present:

HON. PAUL R. HAYS,
HON. WILFRED FEINBERG,
Circuit Judges,

HON. EDWARD C. McLEAN,
District Judge.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,

Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., WORLD AIRWAYS, INC., SATURN AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., CAPITOL AIRWAYS, INC., PURDUE AERONAUTICS CORPORATION (Purdue), AMERICAN FLYERS AIRLINE CORPORATION,

Intervenors.

(and another case)

Order on Rehearing

A petition for a rehearing having been filed herein by counsel for the respondent,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO
Clerk

Order Denying Petition for Rehearing En Banc

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth day of September, one thousand nine hundred and sixty-seven.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,

HON. STERRY R. WATERMAN,
HON. LEONARD P. MOORE,
HON. J. JOSEPH SMITH,
HON. IRVING R. KAUFMAN,
HON. PAUL R. HAYS,
HON. ROBERT P. ANDERSON,
HON. WILFRED FEINBERG,
Circuit Judges.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,
Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,
Respondent,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., WORLD AIRWAYS, INC., SATURN AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., CAPITOL AIRWAYS, INC., PURDUE AERONAUTICS CORPORATION (PURDUE), AMERICAN FLYERS AIRLINE CORPORATION,
Intervenors.

(and another case)

Order Denying Petition for Rehearing En Banc

Petitions for rehearing containing suggestions that the action be reheard in banc having been filed herein by counsel for the respondent and intervenors, Trans International Airlines Corp., World Airways Inc., Purdue Aeronautics Corp., Capitol Airways Inc., and the American Society of Travel Agents, Inc.,

Upon consideration thereof, it is

Ordered that said petitions be and they hereby are denied.

A. DANIEL FUSARO
Clerk

Order Granting Stay of Issuance of Mandate Under Rule 28(c)

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 13th day of October, 1967

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,
Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,
Respondent,

WORLD AIRWAYS, INC., *et al.*,
Intervenors.

Motions having been made herein on behalf of the Civil Aeronautics Board and the Intervenors to stay issuance of the mandate pending a petition for a writ of certiorari to the Supreme Court of the United States,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted and that the issuance of the mandate be and it hereby is stayed pursuant to and subject to the provisions of Rule 28(c) of the rules of this court.

PAUL R. HAYS
U.S.C.J.

WILFRED FEINBERG
U.S.C.J.